TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [illegible] 1911

No. [illegible]57

NORTHERN PACIFIC RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

JOSEPH A. HOUSTON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED JULY 18, 1911.

(22,805)

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State of Minnesota Supreme Court, October Term, 1909.

JOSEPH A. HOUSTON, Plaintiff and Respondent,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, Defendant and Appellant.

Return.

P. B. Gorman, Attorney for Plaintiff, St. Cloud, Minnesota.
Charles W. Bunn, Charles A. Hart, Attorneys for Defendant, 211 N. P. Ry. Bldg., St. Paul, Minnesota.

(Endorsed:) Filed Sep. 27, 1909. C. A. Pidgeon, Clerk.

1 State of Minnesota Supreme Court, October Term, 1909.

STATE OF MINNESOTA,
County of Morrison, ss:

In District Court, Seventh Judicial District.

JOSEPH A. HOUSTON, Plaintiff,
vs.
THE NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Defendants.

Summons.

The State of Minnesota to the Above Named Defendants:

You are hereby summoned and required to answer complaint in this action, which is hereto attached and herewith served upon you, and to serve a copy of your answer to said complaint on the subscriber at his office in the City of St. Cloud, in Stearns County, Minnesota, within twenty (20) days after the service of this summons upon you, exclusive of the day of such service, and if you fail
2 to answer said complaint within the time aforesaid, the plaintiff in this action will apply to the Court for the relief, order, judgment and decree demanded and prayed for in the complaint in the above entitled cause.

Dated St. Cloud, Minnesota, Aug. 14, 1908.

P. B. GORMAN,
Attorney for Plaintiff, St. Cloud, Minn.

(Title of Case.)

Complaint.

For cause of action plaintiff alleges and shows to this court:

1. That the Northern Pacific Railway Company, named as defendant in the above entitled cause, is a corporation duly created, organized, existing and doing business under and by virtue of the laws of the State of Wisconsin, and having its headquarters and principal offices and place of business in the County of Ramsey and State of Minnesota.

2. That Joseph A. Houston, who brings this suit against the said Northern Pacific Railway Company, for the recovery of the legal title to certain lands hereinafter described, is a citizen of the United States, residing in the County of Morrison and State of Minnesota.

3. That at the dates hereinafter mentioned, lots three, five, ten and twelve (3, 5, 10, 12) of section (19) nineteen, township one hundred thirty-one (131) north, of range thirty-one (31) west, of the fifth (5) principal meridian, were surveyed public lands of the United States, lying and being within the twenty (20) miles indemnity limits of the grants made to the Territory of Minnesota by act of Congress approved March 3, 1857 (11 Stat. 195) for the purpose of aiding in the construction of railroads from Stillwater, by way of St. Paul and St. Anthony to a point between the foot of Big Stone Lake and the mouth of the Sioux Wood River, with a branch line by way of St. Cloud and Crow Wing to the navigable waters of the Red River of the North at such point as the legislature of the said Territory of Minnesota may determine, also within the indemnity limits of the grant made to the State of Minnesota for the same purpose, March 3, 1865 (13 Stat. 526) as amended by the act of Congress approved March 3, 1871 (16 Stat. 588).

That all right, title and interest of the State of Minnesota, in and to said grants, and to the lands described or included therein, were conferred, by act of the legislature of the State of Minnesota, dated March 1, 1877, on the Western Railroad Company of Minnesota and subsequently by said Western Railroad Company, assigned and transferred to the St. Paul and Northern Pacific Railroad Company, and again assigned and transferred by the said St. Paul and Northern Pacific Railroad Company, to the Northern Pacific Railway Company, the defendant herein.

4. That on the 31st day of December, 1877, said Western Railroad Company, the then transferee and beneficiary of and under each of said grants, filed in the United States Land Office at St. Cloud, Minnesota, a list of lands, including the tracts above described, which purported to be a list of selections under the indemnity provisions of its grants, but neither said list nor any paper accompanying it, designated any lands within the primary limits of said grants, as having been lost to the company so as to become the basis for the selected tracts.

That on December 4, 1889, the St. Paul and Northern Pacific

Railroad Company, the successor in interest of the said Western Railroad Company, filed in the St. Cloud Land Office, an amended selection list of indemnity lands, including among others, the tracts of land particularly described in paragraph three (3) of this complaint, and on February 12, 1902, said company also filed in said land office, a rearranged list of indemnity selections, also containing reference to the said described lands and for the first time, designated therein, a basis for each tract so selected. But none of said selection list was approved by the Secretary of the Interior as required by law, or otherwise, and each and all thereof were illegal and without valid force or effect.

5. That said described tracts of land are also within the indenmity limits of the grant to the Northern Pacific Railway Company, under the provisions of the act of Congress approved July 2, 1864 (13 Stat. 365) and were included in the withdrawal of indemnity lands made by the Secretary of the Interior December 26, 1871, for the benefit of said company. That said withdrawal was not authorized by law and was revoked by the acting Commissioner of the General Land Office with the approval of the acting Secretary of the Interior, September 6, 1887, (6 L. D. 131). That no selection of the described tracts of land or any of them was ever made under the provisions of the grant to the Northern Pacific Railway Company, and no
5 right in said company or any transferee claiming under it has attached to said lands or to any thereof.

6. That in the month of April, 1900, this plaintiff, Joseph A. Houston, being then as now, a citizen of the United States and a resident of the State of Minnesota, over the age of twenty-one years, the head of a family, not the proprietor of more than one hundred sixty acres of land in any state or territory and, otherwise, in all respects, qualified to become a homestead claimant under the laws of the United States, entered upon, took possession of, and made a settlement on the tracts of land above described, with the bona fide intention of entering the same under the homestead laws, said lands being at that time, vacant public lands of the United States, subject to such entry and settlement, and ever since said date, he has maintained his said possession and use of said tracts as a homestead, and has resided thereon and used the same as his only home, and has cultivated said lands each year and has otherwise improved the same. That the improvements made and placed upon said land are of the reasonable value of eighteen hundred (1,800) dollars, and the tracts of land themselves, in their improved state, are of a value in excess of thirty five hundred dollars.

7. That on August 4, 1902, this plaintiff, Joseph A. Houston, being then a qualified homestead claimant, as aforesaid, presented to and filed with the Register and Receiver of the United States Land District of St. Cloud, in the State of Minnesota, within which land district said lands are situated, a proper and legal application to enter said lands under the homestead laws of the United States,
6 the same being then and there subject to such entry, and accompanied such applicatior by all the required proofs of his qualifications and actions as a homestead claimant, and at the

same time, tendered to the Receiver of said land district the lawful fees and commissions properly chargeable upon the allowance of such application.

But said Register and Receiver, having received and filed said application, did, on the same day, reject the same, and refuse to receive the fees and commissions tendered by applicant, basing such rejection and refusal upon the sole ground that the land applied for was embraced in a then pending, though unapproved, indemnity selection of the land by the said Northern Pacific Railway Company.

From such rejection and refusal this plaintiff appealed to the Commissioner of the General Land Office. On July 29, 1903, the Commissioner of the General Land Office affirmed the decision of the local officers of the said St. Cloud district, rejecting the application of this plaintiff, filed as above stated July 29, 1903, for the reason as stated by him, that such application was in conflict with the prior indemnity selection of the land by the said Northern Pacific Railway Company.

This plaintiff appealed to the Secretary of the Interior from the decision of the said Commissioner, and on July 29, 1904, the Secretary of the Interior affirmed the decision of the Commissioner of the General Land Office, on the ground that the indemnity selection of said lands by the said St. Paul and Northern Pacific Railroad Company, and its predecessor, the Western Railroad Company of Minnesota, were valid and of record prior to the date of the alleged settlement and filing of the homestead application of this plaintiff.

7 No other grounds for the rejection of the homestead application of this plaintiff was given, neither his qualifications as a homestead claimant nor the sufficiency of his residence on the land, nor the value of the improvements placed thereon by him was passed upon or questioned by any of said officers of the land department.

8. The Secretary of the Interior, on February 16, 1905, for the first time approved the indemnity selection of lots three (3), five (5), ten (10) and twelve (12), of section nineteen (19), township one hundred thirty-one (131) north of range thirty-one (31), west of the fifth (5) principal meridian, by the St. Paul and Northern Pacific Railroad Company, referred to hereinbefore. Prior to said approvals, the Secretary of the Interior had not, in any way, authorized or approved the selections of the lands hereinbefore described by the St. Paul and Northern Pacific Railroad Company, or its predecessors the Western Railroad Company of Minnesota under the grants aforesaid.

9. Following such action of approval, a patent of the United States, for the above described land, was on March 25, 1905, issued to the State of Minnesota describing said lands as indemnity lands under the provisions of the grants of March 3, 1857, March 3, 1865 and March 3, 1871, hereinbefore referred to for the use and benefit of the railroad company legally entitled to the same, and thereafter said patent was delivered to the governor of the State of Minnesota as the agent of said state. All estate, title, and interest of the State of Minnesota, in and to any and all lands falling within the provis-

8 ions of the granting acts aforesaid, having been duly conferred on the Western Railroad Company of Minnesota under and by virtue of the provisions of the act of the legislature of Minnesota dated March 1, 1877, as above stated and by an assignment by said railroad company transferred to the St. Paul and Northern Pacific Railroad Company, and by a further assignment, said land was transferred by the said St. Paul and Northern Pacific Railroad Company to the Northern Pacific Railway Company, the defendant in the above entitled cause.

10. That owing to and by reason of the actions of the Register and Receiver, and of the Commissioner of the General Land Office, and of the Secretary of the Interior, based upon a misconstruction and misinterpretation of the statutes of the United States, as aforesaid, this plaintiff has been illegally and unjustly deprived of his right and claim to said lands and of all opportunity to perfect his claim to the same under the homestead laws of the United States.

That prior to the issuance of said patent to the State of Minnesota, he, this plaintiff, had complied with all the requirements of said homestead laws and had thereby become entitled to have a patent for said lands from the United States issued to him in accordance with the provisions of section 2289 and following sections of the Revised Statutes of the United States as amended by the Congress of the United States.

11. Further complaining plaintiff avers that prior to the beginning of this suit and about the month of July, 1907, by reason of mistake, on his part, of the facts in the case, by reason of false and fraudulent statements, and by reason of intimidating threats made to him by defendant, as hereinafter more particularly set

9 forth, plaintiff was induced and driven into making an agreement with said defendant to purchase from the Northern Pacific Railway Company, the land embraced in the above described homestead claim, together with lots four (4) and eleven (11) of said section nineteen (19), township one hundred thirty-one (131) north, of range thirty-one (31) west of the fifth (5) principal meridian, for the sum of one thousand seventy-four and no hundredths dollars (1074.00).

12. Plaintiff affirms that at the time said agreement was made by and between himself and defendant, for the purchase of the said described land, he did not know and was ignorant of the fact that the Northern Pacific Railway Company was not the sole owner of the land in question, he did not know and was ignorant of the fact that the equitable title in and to the land in question was then and there in this plaintiff, Joseph A. Houston, under and by virtue of the homestead laws of the United States; he did not know and was ignorant of the fact that the said railway company had only the legal title of said land; he did not know and was ignorant of the fact that the said Northern Pacific Railway Company held the said legal title as trustee for and to the use and benefit of this plaintiff; and plaintiff alleges that each of these things relating to the ownership of the equitable title of said land, relating to the ownership of the legal title, and relating to the said railway company holding the said

legal title as trustee for this plaintiff, were each, every, and all of them well known to defendant in the month of July, 1907, when plaintiff was induced and driven, as aforesaid, to purchase the said described land from the Northern Pacific Railway Company.

13. Plaintiff further declares that at the time defendant approached him to negotiate a sale of the land above described, through its agents, officers, and employés, defendant told plaintiff that the Northern Pacific Railway Company was the sole owner of the land in question; told plaintiff that the land in suit, was a part of the railway company's land grant, told plaintiff that the said described land was not subject to entry under the homestead laws of the United States and had not been open to such entry and settlement at any time, ever, since the railway company, then in interest, made application to select the same as indemnity land, as hereinbefore stated, told plaintiff that it was foolish for him to ever think of getting said land under the homestead laws of the United States, and told him that the only way he ever could acquire title to the land in question was to buy it from the Northern Pacific Railway Company, defendant herein.

14. Plaintiff affirms that he believed and relied upon each, every, and all of the statements made to him by defendant as specified in the foregoing paragraph thirteen (13), that owing to and by reason of his belief in, and his reliance upon the statements set forth in the above paragraph thirteen (13) he was induced to make an agreement to buy the land embraced in his said homestead claim together with the said lots four (4) and eleven (11) of said section nineteen (19) from the defendant for the sum of one thousand seventy-four and forty hundredths dollars ($1074.40) as hereinafter explicitly stated; that the said statements embraced in the above paragraph thirteen (13), made as aforesaid by defendant to this plaintiff, at the time and just prior to the making of the aforesaid agreement were each, every, and all of them false, fraudulent, and untrue when made to plaintiff by defendant; that defendant knew these statements were each, every, and all of them false, fraudulent, and untrue when they were made to plaintiff, as aforesaid; that the said statements were made by defendant, as aforesaid, positively, deliberately, and intentionally, for the purpose of misleading, deceiving, and defrauding plaintiff; that said statements, in paragraph thirteen (13) embraced, did deceive, and mislead plaintiff into making the aforesaid agreement to buy his said homestead claim and other lands from the defendant railway company and defrauded him out of the sum of money paid by him in pursuance of said agreement and on account of the purchase price of the said described land as hereinafter alleged.

15. Plaintiff further declares that, through their agent, officers and employés, defendant told this plaintiff, immediately before and at the time of making the agreement by and between the plaintiff and defendant for the purchase of the said homestead claim, that, if plaintiff did not then and there agree to purchase the said land from the Northern Pacific Railway Company, the said railway company would eject, oust, and put plaintiff off the claim, and would sell the

same together with plaintiff's home and improvements thereon to other parties.

16. Plaintiff alleges further that he has but little understanding of business usages, customs or methods other than such as he has acquired in the pursuit of common labor and in the occupation of farm work, and that at the time defendant was threatening to eject and oust and put him off his claim, as aforesaid, he was without counsel and without any means of getting counsel or advice.

17. Plaintiff further alleges that, owing to and by reason of the intimidating threats made, as aforesaid, by defendant, to eject and oust plaintiff and his family from and off his said homestead claim, owing to and by reason of the mis-representations, false, fraudulent and untruthful statements made, as aforesaid, by defendant to plaintiff, owing to and by reason of plaintiff's mistake of the facts of the case, as in paragraph twelve (12) hereinbefore mentioned, and having no counsel or advice in the premises, he, this plaintiff, was induced and driven, on or about the 27th day of July, 1907, to enter into and make an agreement with defendant to purchase the land embraced in his said homestead claim together with the said lots four (4) and eleven (11) of the aforesaid section nineteen (19), from the Northern Pacific Railway Company, for the sum of one thousand seventy-four and forty hundredths dollars ($1074.40), which sum he paid over to said railway company in lawful money of the United States in pursuance of the said agreement and as the purchase price in full of and for the land above described, on or about the date last mentioned, and received from said railway company their deed for the same, bearing date 27th day of July, 1907, which deed has been recorded in the office of the Register of Deeds in and for the County of Morrison and State of Minnesota, on the 21st day of August, 1907, at nine (9) o'clock and thirty (30) minutes, in the forenoon of said day in book forty (40) of deeds and on page 223 thereof.

18. Plaintiff further states that the deed received for the above described land by this plaintiff from defendant contains an exception and a reservation: "Excepting and reserving unto the party of the first part, its successors and assigns forever, all minerals of any nature whatsoever upon or in said land, including coal, iron, natural gas and oil, and also the use of such surface ground as may be necessary for exploring for and mining or otherwise extracting and carrying away the same, the lands hereby granted being subject, however, to an easement in the public for any public road or roads heretofore laid out or established, and now existing over and across any part of said described land."

19. Plaintiff further states that defendant insisted against plaintiff's wish, objection and protest, upon including in the sale to this plaintiff, for which the above mentioned payment was made and deed delivered lots four (4) and eleven (11) hereinbefore described, with the above described homestead claim, and that defendant made it a condition obligatory upon plaintiff that the said lots four (4) and eleven (11) be included in the sale, with said homestead claim

and that plaintiff must pay additional therefor or he would not be given an opportunity to purchase the said homestead claim without said lots, but would be ejected and ousted therefrom and the whole place sold to other parties by defendant.

20. Plaintiff avers further that, heretofore and prior to the beginning of this action, he notified defendant of his discovery of the facts and conditions hereinbefore stated and demanded that the agreement for the purchase of said land be rescinded and that the said sum of one thousand seventy-four and forty hundredths
14 dollars ($1074.40), paid as aforesaid, for said land be returned and repaid to this plaintiff by defendant; that defendant refused and neglected and still refuses and neglects to repay said money or any part thereof, or to accede to said demand in any way.

21. Wherefore plaintiff demands judgment against defendant as follows:

First. That the deed signed, executed and delivered, as aforesaid, by defendant to plaintiff, purporting to convey some interest in the said described land to plaintiff, and recorded as aforesaid, be rescinded annulled, cancelled, set aside and stricken from the records.

Second. That plaintiff have judgment against defendant for the said sum of one thousand seventy-four and forty hundredths dollars (1074.40) together with interest thereon, at the rate of six per cent from and after the 27th day of July, 1907.

Third. That the equitable title in and to lots three (3), five (5), ten (10) and twelve (12) of section nineteen (19), township one hundred thirty-one (131) north of range thirty-one (31) west of the fifth (5) principal meridian, be declared by this court to be in plaintiff, Joseph A. Houston, under and by virtue of the homestead laws of the United States.

Fourth. That the Northern Pacific Railway Company be declared and held to be the trustee of the legal title in and to said last above described four tracts or parcels of land for and to the use and benefit of plaintiff, Joseph A. Houston.

Fifth. That the Northern Pacific Railway Company be directed, required and ordered by decree of this court, to convey the
15 legal title to the four lots, pieces or parcels of land herein last above described to plaintiff, Joseph A. Houston, by good and sufficient deed of conveyance, and without reservation, exception or easement of any kind whatever.

Sixth. That plaintiff have judgment against defendant for his costs and disbursements herein, and for such other and further relief as the equities of the case may require and as to this court may seem just, proper and right.

P. B. GORMAN,
Attorney for Plaintiff, St. Cloud, Minn.

STATE OF MINNESOTA,
County of Stearns, ss:

P. B. Gorman, being first duly sworn, doth depose and say that he is attorney for the plaintiff in the above entitled cause, that he has

read the foregoing complaint and knows the contents thereof, and that the same is true of his knowledge except as to those things had on information and belief and as to those things, he believes it to be true, and that this verification is not made by said plaintiff for the reason that he, the plaintiff, is absent from the County of Stearns, wherein resides this affiant.

P. B. GORMAN.

Subscribed to and sworn to before me this 20th day of August, 1908.

JOHN A. ROESER,
Notary Public, Minnesota.

My commission expires March 9, 1913.

Filed September 21, 1908. S. P. Brick, Clerk.

16 (Title of Case.)

Answer.

Now comes the defendant herein and answers the complaint as follows:

I.

Admits that it is a corporation organized and existing under the laws of the State of Wisconsin.

II.

Admits that on December 31, 1877, lots 3, 5, 10 and 12, section nineteen (19), township one hundred thirty-one (131) north, of range thirty-one (31) west, situate in Morrison County, State of Minnesota, were surveyed public lands of the United States, and within the indemnity limits of the grant made to the Territory of Minnesota by act of Congress approved March 3, 1857, and of the grant made to the State of Minnesota March 3, 1865, as amended by the act of Congress approved March 3, 1871, as stated in the complaint and that the title and interest of the State of Minnesota in each of these grants was conferred by the State on the Western Railroad Company of Minnesota, and subsequently passed by assignment and transfer to the St. Paul & Northern Pacific Railway Company, and thereafter from the latter company to the Northern Pacific Railway Company, this defendant.

III.

Alleges that the tracts of land in question were selected by the Western Railroad Company of Minnesota and the St. Paul & Northern Pacific Railway Company by the filing in the St. Cloud
17 Land Office, by the Western Railroad Company, of an indemnity selection list on December 31, 1877, and by the filing

in said office, by the St. Paul & Northern Pacific Railway Company, of an amended selection December 4, 1889, and a rearranged list of indemnity selections February 12, 1892; these indemnity selections were thereafter duly approved by the Secretary of the Interior and following such action of approval patents were issued to the State of Minnesota; subsequently the tracts of land above described were conveyed by the State of Minnesota to this defendant as the successor in interest of the Western Railroad Company and the St. Paul & Northern Pacific Railway Company, and this defendant became and is the owner in fee of the lands in question.

IV.

This defendant is informed and believes that plaintiff entered upon and made settlement on the land herein described April, 1900, and has resided thereon and cultivated the land since that time; plaintiff being at the time of such entry and settlement, as this defendant is informed and believes, qualified to become a homestead claimant under the laws of the United States. And this defendant admits that on August 4, 1902, plaintiff made application to enter the land herein described and that his application was thereafter rejected by the Register and Receiver and that such rejection was subsequently affirmed successively by the Commissioner of the General Land Office and the Secretary of the Interior; and that the rejection of plaintiff's application was based on the ground that the selection of the land by the Western Railroad Company of Minnesota
18 and the St. Paul & Northern Pacific Railway Company, above recited, was regular and valid and of record prior to the date of the alleged entry and settlement by plaintiff, no other reason being given for such rejection; plaintiff's qualifications, his residence on the land and the value of his improvements not being questioned by the officers of the Land Department.

V.

Further answering defendant says that on or about July 12, 1906, it entered into an agreement with plaintiff compromising and settling the dispute between them over the lands above described by the terms of which the defendant agreed to convey its right, title and interest in the lands to plaintiff together with lots 4 and 11 in the same section, reserving to itself the minerals as stated in paragraph 18 of the complaint, and the plaintiff agreed to pay to defendant as consideration therefor the sum of One Thousand Seventy-four and 40/100 Dollars ($1074.40); subsequently this agreement was consummated by the payment of the money by plaintiff and the execution and delivery by defendant to plaintiff of its deed for the lands. At the time of making the agreement referred to above the plaintiff was in possession and claiming the ownership of, and the right of possession to, the lands in question by virtue of his attempted homestead entry thereon, and was the owner of improvements of value on the lands as stated in the complaint; defendant by virtue of its approved indemnity selections and the issue of patent as aforesaid

had become the owner in fee of the lands and entitled to their possession, and prior to the making of the agreement informed plaintiff of the approval of its indemnity selections and the issu-
19 ance of patent thereunder. Thereupon plaintiff, with full knowledge of the facts upon which defendant claimed ownership of the lands, entered into the compromise agreement above described with defendant.

VI.

Save as admitted by this answer the allegations of the complaint are each and all denied.

Wherefore, defendant prays that it be hence dismissed with costs and its disbursements.

CHARLES W. BUNN AND
C. A. HART,
Attorneys for Defendant, 211 *N. P. Gen. Office Bldg., Saint Paul, Minnesota.*

STATE OF MINNESOTA,
County of Ramsey, ss:

R. H. Relf, being first duly sworn, on oath, doth say: That he is the Assistant Secretary of the defendant Northern Pacific Railway Company in the foregoing entitled action; that he has read the foregoing answer of said defendant and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein set forth on information and belief and as to those matters that he believes it to be true.

R. H. RELF.

Subscribed and sworn to before me this 28th day of August, 1908.

W. T. FRANCIS,
Notary Public, Ramsey Co., Minnesota.

My commission expires April 5, 1911.

Filed Feb. 26, 1909. S. P. Brick, Clerk.

20 (Ttile of Case.)

Reply.

Replying to plaintiff's answer in the above entitled case, plaintiff denies that he settled and compromised his differences with defendant about the land, in suit, with a full knowledge of the facts of the case, or with any knowledge of the facts of the case, excepting, or otherwise than, as in their complaint herein stated.

Replying further to defendant's answer plaintiff refers to, restates and makes a part of this reply, so much of his complaint herein as relates to the agreement made by and between plaintiff, Joseph A.

Houston, and defendant for the purchase of the land in question, and so much of said complaint as relates to the circumstances and causes that led up to the making of said agreement, and plaintiff avers that the facts and circumstances which led to the making of said agreement are as in said complaint stated and are not otherwise or as in defendant's answer alleged.

Wherefore, plaintiff prays judgment as in their complaint herein demanded.

P. B. GORMAN,
Attorney for Plaintiff, St. Cloud, Minnesota.

STATE OF MINNESOTA,
County of Stearns, ss:

P. B. Gorman, being first duly sworn, doth depose and say that he is the attorney for the plaintiff in the above entitled cause; that he has read the foregoing reply and knows the contents thereof and that the same is true of his knowledge except as to those things had on information and belief and as to those things he believes
21 it to be true, and that the reason this verification is not made by said plaintiff is because the said plaintiff is absent from the County of Stearns wherein this affiant resides.

P. B. GORMAN,
Attorney for Plaintiff, St. Cloud, Minn.

Subscribed and sworn to before me this 10th day of September, 1908.

MARIE THILL,
Notary Pubic, Minn.

My commission expires June 25, 1915.

Findings of Fact and Conclusions of Law.

(Title of Case.)

The above entitled action having been duly tried before the Court, without a jury, on March 6th, 1909, at the general term of said court held in and for said Morrison County, Mr. P. B. Gorman appearing as attorney for the plaintiff, and Messrs. C. W. Bunn and C. A. Hart appearing as attorneys for the defendant, and the Court having duly considered the same, from the evidence adduced and the admissions of the parties, finds as facts:

That all the allegations contained in the plaintiff's complaint are true, save and except that the agents and employés of the defendant who on behalf of the defendant conducted the negotiations set forth in the complaint, believed that the statements made by them were true, and none of such statements were made for the purpose of misleading, deceiving or defrauding the plaintiff.

22 And the Court further finds that all the allegations contained in defendant's answer, other than those embraced in the foregoing findings of fact, are not true.

And as conclusions of law, the Court finds that plaintiff is entitled to judgment as demanded in his complaint. Let judgment be entered accordingly.

Dated St. Cloud, Minnesota, June 19th, 1909.

By the Court,

M. D. TAYLOR,
District Judge.

Filed June 24, 1909. S. P. Brick, Clerk.

NOTE.—Defendant contends:

1. That the transaction was a compromise of conflicting claims.

2. That plaintiff voluntarily made the contract, took the deed paid for it, and that the maxim volenti no fit injuria applies.

Defendant notified plaintiff that he must vacate the premises or purchase them upon the terms which defendant named. These terms required the purchase by plaintiff of additional land which he did not want and his assent to a reservation which might seriously impair, if not destroy, the value of the property. There was no recognition of any claim on the part of plaintiff; no suggestion of compromise. These onerous terms were stated with the ultimatum that plaintiff must accept them or be ejected. When he acceded and made the purchase, neither party had any thought that they were making a compromise.

23 I am also of opinion that the facts of this case do not bring it within the rule applying to voluntary transactions. Plaintiff complied with defendant's terms in ignorance of his rights and of his title and to avoid losing his home and improvements, and without knowing that it was possible to save them in any other manner.

See Am. Br'g Co. v. St. Louis, 2 Am. & Eng. Ann. Cases, 821, and note.

Perkins v. Trinka, 30 Minn. 241, cited by defendant is limited somewhat by Anderson v. Nystrom, 103 Minn. 168.

M. D. TAYLOR,
District Judge.

Judgment.

(Title of Case.)

The above entitled action, having been duly tried before the Court without a jury, on March 6th, 1909, at the general term of said court, held in and for said Morrison County, Mr. P. B. Gorman appearing as attorney for plaintiff, and Messrs. Charles W. Bunn and C. A. Hart appearing as attorneys for the defendant, the said Court, Hon. M. D. Taylor, one of the judges thereof presiding, after duly considering the matter, the evidence adduced, the admissions of the parties, and being otherwise fully advised in the premises, on the 19th day of June, 1909, filed its findings of fact, its conclusions of law, and its order that judgment be entered in favor of plaintiff and

against defendant as prayed for and demanded in plaintiff's complaint.

24 Now therefore, in pursuance of said order and on motion of P. B. Gorman, attorney for plaintiff, it is determined, adjudged, decreed and ordered accordingly:

First. That the deed made, signed, executed and delivered by defendant to and in favor of this plaintiff purporting to convey some interest in and to lots three (3), four (4), five (5), ten (10), eleven (11) and twelve (12), of section nineteen (19), township one hundred thirty-one (131) north, of range thirty-one (31) west, of the fifth (5) meridian and recorded in said Morrison County, on the 2nd day of August, 1907, on page 223 of book number 40 of deeds be rescinded, annulled, canceled, vacated, set aside and stricked from the records.

Second. That plaintiff have judgment against defendant for the said sum of One Thousand Seventy-four and 40/100 Dollars, together with interest thereon at the rate of six per cent per annum from and after July 27, 1907.

Third. That the equitable title in and to lots three (3), five (5), ten (10) and twelve (12) of section nineteen (19), township one hundred thirty-one (131) north, of range thirty-one (31) west, of the fifth principal meridian is in plaintiff, Joseph A. Houston, under and by virtue of the homestead laws of the United States.

Fourth. That the Northern Pacific Railway Company is declared and held to be trustee of the legal title, in and to said last above described four lots or parcels of land, for and to the use and benefit of plaintiff, Joseph A. Houston.

25 Fifth. That the said Northern Pacific Railway Company is directed, required and ordered to convey the legal title to the four lots, parcels or pieces of land herein last above described to plaintiff, Joseph A. Houston, by good and sufficient deed of conveyance to him and his heirs forever and without any reservations, exceptions or easement of any kind whatsoever.

Sixth. That plaintiff have judgment against defendant for his costs and disbursements herein.

S. P. BRICK,
Clerk District Court, Morrison County.

Principal	$1,074.40
Interest from July 27th, 1907 to Aug. 14, 1909, at 6%	131.98
	$1,206.38
Costs	19.55
Total	$1,225.93

Dated this 14th day of August, 1909.

[SEAL.]

S. P. BRICK,
Clerk of Dist. Court, Morrison County, Minn.

(Title of Case.)

Settled Case.

JOSEPH A. HOUSTON, the plaintiff, called as a witnes on his own behalf, being first duly sworn, and examined by Mr. Gorman, testified as follows.

Q. Mr. Houston, you are the plaintiff in this Case?
A. Yes, sir.
26 Q. When did you settle on the land in question?
A. 1900.
Q. What time in the year 1900?
A. I think it was in April; in the spring; I can't remember the date.
Q. What did you do at that time?
A. Do you mean to improve the land? I built a house there.
Q. Built a house?
A. Dug a well.
Q. What else did you do?
A. Built a barn.
Q. What further?
A. Started to build fences around the land, and cleared and broke.
Q. Cleared and broke some that year?
A. Five acres that summer. I couldn't do any more on account of building and making fences.
Q. Did you continue to live there that whole year?
A. Yes, sir.
Q. Where did you live the next year?
A. I lived there; I have never been off it.
Q. Did you make any improvements the second year?
A. Yes, sir. I built a corn-crib and milk-house and two other barns; small barns, not very big.
Q. Do any clearing the second year?
A. Yes, sir.
Q. Did you cultivate the land that year?
A. Yes, sir.
Q. Cropped it?
A. Yes, sir.
Q. Raised a crop?
A. Yes, sir.
Q. What crop did you raise?
A. I raised oats, wheat and potatoes; all kinds of garden stuff.
Q. Yes. The third year; did you continue to live there the third year?
A. Yes, sir.
Q. Making improvements there that year?
A. I been making a little improvements each and every year since I was there.
Q. Up to the present time?
A. Yes, sir.

27 Q. Did you cultivate the lands each and every year?
A. Yes, sir.
Q. How many acres of land did you clear, grub and break, in all, prior to the purchase of the land from the railroad company?
A. I think it is sixteen acres, prior to the purchase of the land.
Q. Sixteen acres?
A. Yes. Sixteen or eighteen.
Q. Did you clear up any meadow prior to that time?
A. Yes, I have cleared up about thirty-five or forty acres.
Q. Did you build any fencing on this place prior to the purchasing of the land from the company?
A. Yes.
Q. About how much?
A. Oh, I fenced in pretty near all of it.
Q. What kind of a fence?
A. That was a rail fence.
Q. Any of it wire fence?
A. Yes; it rotted; rail fence started to rot and I started to build a wire fence around it now.
Q. Yes. Well, taking into account your buildings—house, barn and other farm buildings; clearing, grubbing, breaking of the land, your clearing and improving of the meadow land, what was your improvements worth all told?
A. I think they are worth about eighteen hundred dollars.
Q. Mr. Houston, where were you born?
A. I was born in Norway.
Q. When did you come to this country?
A. In 1879.
Q. When did you take out your first—did you ever take out citizen papers?
A. Yes, sir.
Q. When?
A. About seven years ago, the last papers.
28 Q. When did you take out the first papers?
A. Yes, I took out the first papers in 1888, I think.
Q. How?
A. Or I don't remember exactly the year I took out the first papers. It was in '86 or '87 I think I took out the first papers.
Q. Have you brought any of those papers with you?
A. I got the last paper here.

Paper produced and handed to counsel.

Q. Is this what you call your citizenship papers?
A. Yes, sir.
Q. Look at it, please?
A. Certificate of citizenship; I understood that was the citizen-paper.

Paper offered in evidence, and marked Plaintiff's Exhibit A.

Q. Mr. Houston, did you ever have the benefit of the homestead law before you settled on this land?

A. No, sir.

Q. Did you ever own any other land anywhere at the time you settled on this land?

A. Yes, I did.

Q. Were you the owner of more than 160 acres of land anywhere?

A. No.

Q. You were not. You said you did own some land at the same time; where was it?

A. Not at the same time as I had this.

Q. Oh; then you misunderstood the question?

A. I misunderstood that question; excuse me.

Q. At the time you settled on this land did you own any other land any place?

A. No, sir.

Q. Did you ever apply to enter this land at the United States Land Office?

A. Yes.

Q. Under the public land laws. When did you make your application to enter it?

A. 1902.

Q. Do you remember what month?

29 A. No, I don't remember, but I think it was in July or August; I don't remember that.

Q. July or August?

The COURT: That is admitted; the application was made August 14th, 1902.

Q. Yes, it was made out in August, I know, but I thought I would report that in evidence. When you made the homestead application did you see the money tendered with it also?

A. Yes.

Q. Application was made in good form and all right?

A. Yes

Q. Do you remember whether it was rejected or accepted?

A. Rejected.

Q. Do you know why? Why was it rejected?

A. Because I understood it belonged to the railroad company.

Q. The railroad company claimed it?

A. Yes.

Q. What was done with the application after it was presented at the Land Office at St. Cloud? Did you have an attorney in the matter?

A. I think it was sent to Washington to the General Land Office.

Q. What was the result there?

A. It was rejected.

Q. Any further action taken? After the General Land Office acted upon it do you know whether it went to the Secretary of the Interior?

A. Yes, it went to the Secretary of the Interior and was rejected.

Q. He rejected it also?

A. Yes, sir.

Q. When did you learn that?
A. I heard that—that it was rejected?
Q. When did you hear it?
A. Attorney told me so.
Q. When?
A. Oh, that is long time ago.
Q. Yes. Well, did you know—you don't remember when
30 it was?
A. No, I don't exactly remember when it was.
Q. Well, when it was rejected what did you do next?
A. Well, I didn't know what to do.
Q. Then if you didn't know what to do, what did you do?
A. I think the—I think it was decision made to the railroad company?
Q. How is that?
A. I think it was approv*al* to the railroad company for that land.
Q. It was approved to the railroad company. Do you know when it was approved to the railroad company?
A. In 1905.
Q. Well, when did you hear about that?
A. Well, I heard some rumor in the neighborhood that the land was approved to the railroad company, and I also see a statement at the same time in the newspaper, and I went to Little Falls to the Register of Deeds, and the Register of Deeds told me it was approved and patended to the railroad company.
Q. What impression did that make on you?
A. Well, I thought that the railroad company was the owner of the land.
Q. What did you do then?
A. Didn't do nothing.
Q. How did you get in any negotiation with the railroad company?
A. They wrote to me about it afterwards that they had—they wrote me a letter.
Q. Have you got the letter with you?
A. No, not the first letter I got, I couldn't find; it *was* disappeared somewhere.
Q. Did you make a diligent search for it?
A. Yes, I did.
Q. And couldn't find it?
A. Couldn't find it.
31 Q. Do you remember what it stated?
A. Yes, it stated——

Mr. HART: Now I think I shall enter an objection to that as not the best evidence. I want to get the facts out, but we have no way of testing the information in that shape.

Q. Will you kindly state what kind of a search you made?
A. I searched everywheres where I thought it would be in the house, everywheres.
Q. Where did you think it would be?

A. I think the children maybe got hold of it.
Q. I say where did you search?
A. Well, generally I got a trunk generally keep such papers in where I found the rest of the letters, and I also got a closet in the house where we got such papers, and I searched those two places, and in fact every box and thing that was in the house.
Q. You searched every place in your house and didn't find it?
A. Didn't find it.
Q. You did find other letters?
A. Yes, I found two of them, two that is later on.
Q. The other letters were later?
A. Yes.

The COURT: Objection overruled. I think that is sufficient foundation.

Q. Please answer, what was the contents of the letter?
A. I don't know as I could repeat it word by word, but they said that they had a patent of this land that I occupied as a homestead owner and that they were prepared to sell it to me for so much an acre.
Q. And what further did they say?
A. Well, that is about what they said in that letter, that they let me understand that they owned the land, that I had the first chance to buy it.

32 Mr. HART: I move to strike out that latter part of the answer; led him to understand certain things.

Q. (Prior question and answer repeated by Reporter, at the Court's request.) And what further did they say?
A. Well, that is about what they said in that letter, that they let me understand that they owned the land, that I had the first chance to buy it.

Mr. HART: Then I withdraw the motion.

Q. After receiving that letter what did you do?
A. Well, I was discouraged; I didn't know what to do. I had made lot of improvements on it, and I wasn't able to buy it, and I went to St. Paul.
Q. One moment. Did you get any other letter before going to St. Paul?
A. No, I don't remember as I did.
Q. You don't remember about that?
A. No.
Q. Well, then you went to St. Paul. Tell us what you did after you went to St. Paul?
A. I wanted to see the Land Commissioner.
Q. Well, did you see him?
A. And they showed me where the Land Commissioner was, and I spoke to the Land Commissioner, and he said he was busy and showed me to some of his clerks.
Q. Turned you over to a clerk?
A. Yes.

Q. What did you do next?

A. Well, I was asking about this claim that I occupied, and he showed me the patent book, or at least he said it was the patent book, that he had it patented, that it was patented to the railroad company.

Q. What further passed at that time?

A. Well, they said that they would sell me the land at so much an acre, but I didn't buy it. I went home again.

Q. Went home?

A. I went home again.

33 Q. Do you remember anything further that was said at that time between you and the clerk?

A. No, I don't remember.

Q. Well, after going home what next happened?

A. Well, I didn't do anything until I got a letter from the railroad company again.

Q. Did you get another letter?

A. Yes, sir.

Q. Got it with you to-day?

A. I think so. (Paper produced by the witness.) I wrote to them after I came up.

Q. You said you had some explanation to make; what is it?

A. I wrote to the railroad company before that letter came.

Q. You wrote to them?

A. Yes; they was telling me that they would reserve all mineral, and I thought a deed of that kind wouldn't be very good; so I wrote to them and asked if they would strike out the mineral, and that is what they answered.

Q. When you say you asked them if they would strike out the mineral what did you mean?

A. Out of the deed; that is, I asked them if they would strike out the mineral.

Q. Well, do you mean to say you asked if they would sell that land without the reservation?

A. I asked them that question, if they would sell the land without the reservation of the mineral.

Q. You asked them that question?

A. I asked them that question in the letter.

Q. And this is the answer?

A. That is the answer.

Q. Now be sure that is an answer you got in answer to that.

A. Well, I am pretty sure that is the answer to that.

The letter was then marked Plaintiff's Exhibit B, offered
34 in evidence by plaintiff's counsel, and received without objection.

Q. On the receipt of this letter what did you do next?

A. Well, I was discouraged; I didn't know what to do about it. I thought I would have to buy it or lose my improvements, and get off there, because they told me so.

Q. They told you that?

A. They told me I would have to get off, give me such a length of time to get off.

Q. Did you answer this letter?

A. I don't remember whether I did or not; if I did there should be a record of that at the office maybe.

Q. Did you receive any other letters from the company?

A. Well, I wrote them about this Lot 4 in 11; I got that.

Letter produced and marked Plaintiff's Exhibit C, and then offered in evidence by plaintiff's counsel and received without objection.

Q. What did you do after receiving that letter; what was the next step in the negotiations with the company?

A. I think I bought it.

Q. Well, hadn't you some interview with some employé of the company before buying it?

A. Oh, yes; there was some of their agents up there looking over the land, stopped with me over night and one day there, and he told me that the——

Q. One moment; do you remember the agent's name?

A. His name is Gilmore.

Q. Gilmore?

A. Yes, sir.

Q. Do you remember when he was there?

A. March; I think in March I guess, or the first part of April, or in the spring; it was in the spring.

35 Q. In the spring of what year?

A. 1906, I believe.

Q. In the spring of 1906. Well, you say he stopped with you all day and over night?

A. Yes, sir.

Q. Had some talk about the negotiations?

A. Yes, we had some talk about the land.

Q. Please state the conversation you had with him?

A. Well, he was telling me that the company had the patent of the land, it was approved by the Secretary of the Interior to the railroad company, and it was registered in the Register of Deeds' office here at Little Falls, Morrison County; and he says, "The only way you can get this land is to buy it from the railroad company." He said, "It would be only foolish for you to think you can get this under the homestead law."

Q. Had you talked with him about getting it under the homestead law?

A. I was telling him I had filed homestead papers on this land and I thought I had a right to it some way, but he told me that the only way I could get it was to buy it from the railroad company, that they had the patent of it.

Q. Did you talk to him about having got any legal advice on the question from any attorney?

A. Well, I been speaking to attorneys about it.

The COURT: The question is what you told him in reference to it.

The WITNESS: This is what I told him. I asked the attorney

there in Little Falls about it, and Long Prairie, and they also told me——

The COURT: Well, is that what you told him? The question is what you told this man there, not what you did.

36 Q. What you told Mr. Gilmore.

A. Oh, I didn't tell him that; excuse me.

Q. What did you tell him about getting legal advice; what did you tell him about getting legal advice?

A. Well, I told him I had seen Mr. Gorman at St. Cloud, and I told him that he said that he thought it would be a chance under the homestead law. Well, he says, "There is an attorney in St. Cloud by the name of Gorman; he is working among the settlers making them believe they can get this land under the homestead, trying to fleece them out of their money," he says, "in it, but there is nothing in it; that man ought to be punished; there is no way of getting this land under the homestead law; the only way you can get it is to buy it."

Q. Said the attorney was misleading the settlers?

A. Said the attorney was misleading the settlers.

Q. And fooling them?

A. Yes, "and he ought to be punished." That is just the way he said to me.

Q. Well, did you know this attorney Gorman of St. Cloud at that time?

A. I wasn't personally acquainted with him. I seen him.

Q. You had seen him?

A. Yes; and talked to him.

Q. Didn't know him personally?

A. No.

Q. How far is your home from St. Cloud?

A. Oh, it must be fifty—sixty miles; something like that.

Q. How many times had you ever seen that attorney Gorman?

A. How I had seen him?

Q. At that time.

A. At that time when I saw this man Gilmore.

Q. Yes.

A. I only seen him once then.

Q. Did you believe what Gilmore said about the attorney?

A. Why, I did.

37 Q. You did believe it?

A. Yes, I did believe it.

Q. Is that the reason you had no confidence in getting the homestead, because you thought the attorney had misled you?

A. Yes.

Mr. GORMAN: Take the witness.

Cross-examination.

By Mr. HART:

Q. Who was your attorney when you made your application to enter?

A. I think it was Mr. Lindbergh.

Q. Of this city?

A. Yes, sir.

Q. Now you spoke in your direct examination of Attorney Gorman. That is the gentleman opposite me, who is now handling your case?

A. Yes, sir.

Q. And after you had been down to St. Paul and saw the railway company land department you went to Mr. Lindbergh, I suppose, for advice, did you?

A. Why, he told me that it was patented to the railroad company. He told me that the papers were rejected, too.

Q. Well, you knew it was patented to the railroad company, didn't you?

A. Yes, sir; that is what they said down there at the office.

Q. So you say when you bought—when you closed the deal with the railway company you believed that they owned the land?

A. Well, I was made to believe they owned the land.

Q. Yes; when did you find out anything different?

A. Well, I was talking with Mr. Gorman about it.

Q. You say you were made to believe that the railway company owned the land?

A. Yes, sir.

38 Q. That is, they told you they had a patent of it?

A. They told me that; yes, sir.

Q. That's all they told you, isn't it?

A. That is all they told me, that they owned the land and had the patent of it.

Q. When did Mr. Gorman tell you that the railway company did not own the land?

A. Well, that is when I asked him about this land, he told me that, that I owned the land; I didn't know I owned the land after they made me believe that they had a patent of it.

Q. Well, then, how long after that was it that you went to see Mr. Gorman again, how long after?

A. After I was to St. Cloud—or I mean to St. Paul?

Q. Yes. No, after you bought the land from the railway company, how soon then did you go and see Mr. Gorman?

A. If I remember right, I bought the land in 1906 sometime.

Q. Yes.

A. June, I think.

Q. Yes.

A. And I seen Mr. Gorman about it the next year, I think it was I don't remember exactly.

Q. Did he tell you about Mr. Wass's homestead?

A. I heard something about it—Mr. Wass.

Q. Did Mr. Gorman tell you about Mr. Wass?

A. I seen some of it in the paper—in the newspapers.

Q. Yes; and then did he?

A. I don't remember; I guess maybe he did; I don't remember that.

Q. Well, what did he say to you about the land; he didn't tell you that the railway company did not have a patent, did he?

A. Oh, no; he didn't say that.
Q. What did he say?
A. He said—he said that the land was patented to the railroad company, but he thought anyone that had entered homestead
39 papers or filed homestead papers before the decision, that it belonged to the settler.
Q. Yes. Now this Mr. Gilmore who called on you, you can't give us the exact date, can you?
A. No, I don't think I could; I don't remember. It was in the spring of the year; I think it was the last of March or first part of April, or sometime in April; the spring of the year. It was very slushy; I remember that.
Q. It was a short time before you signed the agreement to take the land, wasn't it?
A. Oh, I didn't sign no agreement then; I ain't signed no agreement.
Q. I thought you did.

Mr. GORMAN: We admit that Mr. Gilmore was up a short time before.

A. Oh, yes; I thought you asked me that I made the agreement before Gilmore was up; excuse me.
Q. Yes; then you had this talk with Mr. Gilmore about April, May or June, 1906?
A. I think it was in April, first part.
Q. 1906; and he told you the company had a patent?
A. Yes, sir.
Q. And if you wanted the land you would have to buy it from them?
A. Yes, from the railroad company.
Q. You told him you thought you had some right to it?
A. Yes, sir.
Q. And you thought you did, didn't you?
A. Yes, I did.
Q. Some lawyers had told you you did—Mr. Gorman.
A. Well, Mr. Gorman hasn't told me nothing about that then.
Q. I thought you said on direct examination.
A. No, sir; not before I bought the land; I seen Mr. Gorman.
40 Q. Yes. Now perhaps I have misunderstood you. You told Mr. Gilmore when you were talking with him that you had seen lawyers in Little Falls and St. Cloud?
A. Yes.
Q. Well, what lawyers had you seen in St. Cloud?
Mr. GORMAN: He said Long Prairie.

A. I said Long Prairie.
Q. What lawyers had you seen?
A. Oh, I seen lawyer Wood in Long Prairie, and I seen lawyer Davis.
Q. Well, you told Mr. Gilmore that you thought you had some right to the land?
A. Yes.

Q. Because these lawyers told you that you had?
A. No, they told me that it was gone.
Q. That it was gone?
A. That it was patented to the railroad company.
Q. Well, why did you think you had some right to the land?
A. Well, I thought I did until they began to give me threatening letters that I had to buy them.
Q. Yes, I know, but why did you think, what made you think so?
A. Well, because they made me think so in the first place, and I still thought I had a right to it; I never had no homestead.
Q. You said in answer to Mr. Gorman's questions that he advised you there was a chance under the homestead law?
A. Yes, sir.
Q. When did he tell you that?
A. Well, that was oh sometime after I bought the land; I forget the day; date I couldn't tell you.
Q. You said you had seen Gorman once or twice before you bought the land; is that true? You knew him slightly, had seen him once or twice?
A. I have seen him, yes.
41 Q. Had you talked to him at all before you bought the land?
A. I believe I did.
Q. What say?
A. I believe I did talk to him, but I didn't talk to him anything about the land, I believe, I stated I seen him.
Mr. GORMAN: He is mistaken about that.
The WITNESS: Well, I am mistaken; I don't remember exactly.
Q. I want to know what talk you had with Mr. Gorman before you bought the land?
A. Well, I hadn't had any talk with Gorman about the land before I bought it.
Q. What did you talk with Mr. Gorman about?
A. I don't remember what I talked to Mr. Gorman about, but I know we didn't have nothing about the land at the time.
Q. Mr. Gorman was representing some other settlers at that time, was he?
A. Not in that locality.
Q. How did you happen to meet him?
A. I met him; oh I have heard of him when I went to St. Cloud.
Q. How did you hear of him?
A. That he was trying to—that is that he was representing the settlers, and I went to see him.
Q. You went to see him?
A. Yes.
Q. Was this before you bought the land?
A. No.
Q. I want to know about before you bought the land.
A. I hadn't said nothing to Mr. Gorman before I bought the land; it was Mr. Lindbergh represented the papers first.
Q. Did you ever meet Mr. Gorman before you bought this land?

A. I think I did.
Q. Where?
A. Little Falls, here on the platform.
42 Q. Talk to him?
A. I mean over to the depot.
Q. You had heard about Mr. Gorman, had you, at that time?
A. I have heard about Mr. Gorman, yes.
Q. Did you know then that he was trying to get the land for some settlers?
A. No, I did not; not Mr. Gorman; Lindbergh was the one that was trying it.
Q. I think that's all.
(No. answer.)

Redirect examination.

By Mr. GORMAN:

Q. Mr. Houston, in the talk that you had with Mr. Gilmore when he visited your place in the spring of 1906, did he say anything about your having to move off that land?
A. I believe he did, if the person don't buy it, didn't buy it.
Q. Please tell what he said about that.
A. I don't exactly remember what he said. I asked him what would he do about—I told him I wasn't prepared to buy, didn't have the money; and he said: "Well, they will give you—they will give you ten years' time to buy the land by paying down the first payment." "Well," I says, "I didn't have the money to—to even pay the first payment at that time; and he said, I asked him then what they do to a person when he didn't have the money." "Well, then," he says, "I suppose they will set you off and sell the land to others." That's all I remember his talking about that.
Q. That's all.
(No answer.)

Mr. HART: That's all.

Plaintiff rests.

43 G. B. WALKER, called as a witness on behalf of the defendant, being first duly sworn and examined by Mr. Hart, testified as follows:

Q. Your name is G. A. Walker?
A. G. B.
Q. What is your business, Mr. Walker?
A. Well, I am right of way agent for the Northern Pacific Railway Company at present.
Q. What position did you hold in 1906?
A. Land examiner.
Q. How long had you been in that position?
A. About seven or eight years altogether.
Q. Are you familiar——

Mr. GORMAN: We object to any testimony given by Mr. Walker that doesn't relate to the case now under consideration.

The COURT: Well, this is simply preliminary as to what his position was. Proceed.

Q. Are you familiar with the area of the indemnity lands in Minnesota?

A. Somewhat; yes, sir.

Q. Are you familiar with the lands involved in this action of Houston against the Northern Pacific, in Section 19?

A. I don't know that I fully understand that question; am I familiar with the land of the——

Q. With the land itself; have you ever been on it?

A. I never have made an examination of that land; no, sir. I have been by it and have seen it, but have never made a close examination.

Q. Have you conducted any of the negotiations with other settlers similarly situated——

Mr. GORMAN: Object——

Q. Just a moment, please, Mr. Gorman, until I finish my
44 question. Conducted the negotiations with settlers similarly situated to Mr. Houston?

A. I have.

Mr. GORMAN: Object to it on the ground it is incompetent, irrelevant and immaterial, what he might have done in regard to other claims and other negotiations.

The COURT: This does not ask what he has done as to other claims, but asks whether he has or not; simply asks as to the fact whether he had negotiations, doesn't ask what they were; objection overruled.

Q. Are you familiar with the policy and the method adopted by the railway company in dealing with the settlers on these indemnity lands which were patented to the railroad company and situated similarly to Mr. Houston?

Mr. GORMAN: Objected to on the same ground.

The COURT: Objection sustained. I don't see how that can be material in any way, or competent in any event.

Mr. HART: Well, it is preliminary. I had in mind this situation I should like to show. Of course, the complaint states, and so far without proof, that the railroad company proceeded in this case, making these statements as to the ownership and forcing the sale knowing that these statements were untrue and that it did not have any ownership of the land. I was getting at the attempt of the company to show good faith.

The COURT: I don't see how that is relevant in this case.

Q. Are you acquainted, Mr. Walker, with the value of lands in Morrison County and over in the locality in which these lands in question are situated?

Mr. GORMAN: Objected to for the reason that land varies
45 very much in value in Morrison County and in this locality.
The COURT: Objection overruled.

Q. You may answer, Mr. Walker.
A. I think I am quite well acquainted with the value of land.
Q. During your work as Land Examiner have you had occasion to examine into the values of land in Morrison County and the particular locality mentioned here?

Mr. GORMAN: Objected to for the same reason.
The COURT: Objection overruled.

A. Very frequently; yes, sir.
Q. It appears without dispute in this action that the amount paid by the plaintiff to the railway company for the land in question was five dollars per acre. No dispute about that, is there?

Mr. GORMAN: The amount is.
The COURT: Does the acreage appear in the pleadings? The amount paid appears, but I haven't noticed anything showing the acreage.
Mr. GORMAN: It seems to be stated in the application, five dollars an acre.

Q. How does that price of five dollars per acre compare with the fair value of that land at the time this transaction was consummated in July, 1906?

Mr. GORMAN: Objected to for the reason that the witness has already testified that he never examined this land.
Mr. HART: Well, it don't take a physical examination always, essentially; he has shown his competency as to the value.
Mr. GORMAN: The Court knows very well that there is a great difference in the variety of soil. Soil that is of light sandy
46 nature is not as valuable as clay soil in certain places and soil that has a certain subsoil; you take land that is gravelly subsoil has a very much less value than land with a clay subsoil. Then, too, land that lies level and evenly has a greater value than that which is rolling and hilly or does that which is interspersed with those low places that are called the cart holes or by one name or another. There is such a great difference in the value of land that no man is competent to put a price upon a tract which he has not made a special examination in these regards as to subsoil, top soil, whether it is free from gravelly knolls and the like.
The COURT: I think I will receive the question; and the objections raised go rather to the weight to be given the testimony than to its relevancy.

Q. You may answer.
The COURT: Well, what was the reasonable value of this land at the time specified? Limit the question to that; the reasonable market value of this land at the time stated, if you know?
A. There is no land in that vicinity that I know but what is worth

over twice as much and in many cases three and four times as much as the price given.

Q. No, what was the value of this land?

The COURT: That was not the question asked. The question asked is what was the value of this land in controversy, if you know; eliminate comparing it with some other land.

A. I don't think I could give the value of it without an examination.

Q. You were aware, were you not, Mr. Walker, at the time—you were aware of these negotiations for the settlement between
47 the railway company and Houston at the time they were going on?

A. I don't remember that I was aware of that particular case, except in a general way, that negotiations were going on for a settlement with all the settlers.

Q. Well, do you know then what—on what basis the prices were made on which the railway company were willing to sell the land to Houston and others?

A. Yes, sir.

Mr. GORMAN: Objected to as irrelevant, incompetent and immaterial.

The COURT: Objection sustained, unless it is shown that this information was communicated to the plaintiff.

Mr. HART: Well, of course I understand the technical nature of the objection that might be made to all this testimony, but I purposely kept quiet while the plaintiff told everything the people told him. This is an equitable action and in its very nature cannot be tried with the limitations that would have to be imposed in a jury case, but Your Honor can see that there isn't any particular person I could point to or bring here who could tell what the policy was, what the reasons was. It is already shown, the purpose of the railway company. Now, Mr. Walker was the land examiner and in charge of negotiations with settlers of this kind similar to Houston, and I want to bring out the position of the railway company with reference to these settlements or compromises.

The COURT: Yes, but the evidence you are offering is to show what motive, line of policy that the company may have had for this, what that was; I don't think that that is relevant or compe-
48 tent unless you show that knowledge of that fact was brought home to the other side at the time of these negotiations. The line of policy you had in your own mind or that the officers of the company agreed upon between themselves would not have any effect upon the transactions.

Mr. HART: No, I misused the term or the word "policy." That is not what I am getting at. What I am getting at is to negative the statements of fraud and to substantiate the statements of the answer as to the compromise and to show that the price at which these lands were turned over to Mr. Houston was less than their value and the reason for so turning them over at less than their value

was because of the conflicting claims to them. Perhaps I could frame another question to get at that situation a little better.

Mr. GORMAN: There was no conflict in the claims at that time. The plaintiff admits he thought the company owned the land at that time.

Q. Do you know whether or not—do you know whether the price at which these lands were turned over to Mr. Houston by the railroad company represented what the railroad company considered to be the full value of the lands?

Mr. GORMAN: Objected to as incompetent, irrelevant and immaterial.

The COURT: I don't think that is admissible.

Q. What knowledge did your company have, Mr. Walker, at the time of these negotiations concerning the ownership and title—ownership of and title to the lands in question?

Mr. GORMAN: Objected to for the reason that it is incompetent, irrelevant and immaterial.

49 The COURT: Objection overruled to that. That depends somewhat on how it is answered, whether it is admissible or not.

Q. You may answer.

A. They had a knowledge that it was patented to them by the Land office at Washington, and I had also seen those patents and seen the record of them in the different counties.

Q. What knowledge did your company have of the claim made by Houston under homestead rights?

Mr. GORMAN: Objected to on the ground it is incompetent, irrelevant and immaterial.

The COURT: That objection is sustained on the ground that it asks for what the witness in the nature of things could not know.

Mr. HART: It seems to me that evidence of that kind must necessarily come from some employé or officer of the railway company. Now to negative the charges of deceit and fraudulent statements we must necessarily show what the frame of mind of the persons directing the company's interests was; the persons having these things in charge.

The COURT: Your question asked what the company knew, not what this witness knew.

Mr. HART: Objection then is sustained?

The COURT: Objection is sustained. The term "company" is a very vague expression, unless it be held to mean all the officials of the company, and in that case this witness probably could not know what they knew in reference to it.

Q. What information, Mr. Walker, did your company have concerning the claims of Mr. Houston to the land in question?

Mr. GORMAN: Objected to as irrelevant, incompetent and immaterial.

50 The COURT: That objection is overruled; he can answer the question in so far as his knowledge extends.

A. That a homestead entry had been filed on Mr. Houston's claim and had been rejected.

Q. And what with reference to improvements?

A. The company knew there were improvements on that land.

Mr. HART: I offer to show by this witness that the defendant railway company in making the agreement or settlement referred to in the pleadings undertook to convey its interests in the lands to the plaintiff at a lower price than what it considered to be the reasonable value of the land because of the fact that the plaintiff was a homestead settler on the land, had made improvements and had improvements, and was making a claim to the land by virtue of his homestead entry.

The COURT: I presume that was the fact that they made a lower price than they did to outsiders—these settlers.

Mr. HART: I didn't understand.

Mr. GORMAN: That is——

The COURT: I was addressing remarks to opposing counsel.

Mr. GORMAN: No, that is not true. A piece in this same section was sold to a person—was sold to a person who was not a homestead claimant, I think, at about the same figures.

The COURT: Well, that's all; if it is not conceded counsel can proceed and make his proof.

Mr. HART: I thought the objection sustained went to the merit of that rather than to the manner of bringing it out; if that is not true I will withdraw the offer and go ahead with the question.

51 The COURT: Well, you have injected into your question—into your offer one element that I think vitiates both your question and offer, and that is this: that you confined it to what the company considered to be the value of the land. I think that that is not relevant or competent.

Mr. HART: Well, I did that purposely.

The COURT: Very well, if you understand the effect of that; objection to that offer is sustained.

Mr. HART: What I was getting at was this: at the time of the railroad company—that, of course, is material on that proposition as to whether or not—what it believed—what its purpose was, whether it was endeavoring to fraudulently deprive this man of his land or whether it was endeavoring to effect a compromise agreement. That is why it seemed to me defendant's own belief as to the value would be relevant. Doesn't the Court think that that is the situation?

The COURT: I don't think so, where it is not shown that that knowledge of that belief is brought to the opposite party.

Q. Well, with that interpretation of the Court's I will go ahead and see if I can frame other questions to meet the Court's approval. Mr. Walker, in making the agreement for settlement with Mr. Houston and the other settlers do you know what the purpose of the railway company was with reference to the figures at which the land should

be sold to the settlers, whether the lands were intended to be sold at the fair reasonable market value or at a lower price?

Mr. GORMAN: Objected to for the reason that it is incom-
52 petent, irrelevant and immaterial; the knowledge of the fact not being brought to the attention of the plaintiff.

The COURT: Objection sustained.

Q. I note an exception to that ruling. Do you know, Mr. Walker, generally what the—do you know generally in making the settlements with Mr. Houston and other settlers whether or not the railway company did in fact charge and receive from the settlers, including Mr. Houston, the reasonable market value of the lands or a lesser price?

Mr. GORMAN: Objected to for the reason that it is incompetent, irrelevant and immaterial; and for the further reason that the witness has already testified that he was incompetent to say what the value of Mr. Houston's land is.

The COURT: Objection sustained.

Q. Note an exception to that. Do you know, Mr. Walker, whether or not the railway company by reason of the occupancy of this land by the plaintiff, his improvements upon it, his homestead claim against it, received from him in that settlement arrived at between them less than the reasonable market value of the land?

Mr. GORMAN: Objected to on the ground that it is irrelevant, incompetent and immaterial, and for the further reason that no intimation of that kind was brought to the attention of Mr. Houston, and for the further reason that Mr. Walker has already testified that he did not know the value of Mr. Houston's land.

The COURT: I think I will admit this question. This asks for a fact; the witness' knowledge of the fact.

A. Please repeat the question.

53 Q. (Prior question repeated by reporter, at counsel's request.) Do you know, Mr. Walker, whether or not the railway company, by reason of the occupancy of this land by the plaintiff, his improvements upon it, his homestead claim against it, received from him in that settlement arrived at between them, less than the reasonable market value of the land?

Mr. GORMAN: May it please the Court, in further objection to that, I want to say that at the time that this land was negotiated and sold to Mr. Houston his homestead claim had been rejected finally; it had passed out of the jurisdiction of the Land Department, and there was no question of a homestead claim there. The fact that Mr. Houston may even now be entitled to the benefits of the homestead law is not equivalent to saying at that time his homestead claim was in controversy. A homestead claim had been rejected finally, and so far as the Land Department was concerned it was settled in favor of the company.

Mr. HART: The counsel is not consistent.

The COURT: Objection overruled; he can answer the question.

Q. Answer the question.
A. A much lower price than the real value.

Mr. HART: That's all. You may cross-examine.
Mr. GORMAN: No questions.

Defendant rests.

JOSEPH A. HOUSTON, the plaintiff, recalled on his own behalf, in rebuttal, and examined by Mr. Gorman, testified as follows:

Q. Mr. Houston, in the testimony given by the last witness
54 on the stand the question of values of land in your vicinity was raised, and I ask you whether you know the value of land in your vicinity in its natural state?
A. At the present time, or at that time?
Q. Well, at the time that you negotiated the purchase of this land from the company, about that time? Do you know what the value of land without improvements, in its natural state?
A. Oh, that would run all the way from——
The COURT: He asked you if you know, not what it was; you can answer that by yes or no.
The WITNESS: Yes, I did.
Q. Well, kindly state to the Court what the value of land was in that vicinity at that time in its natural state.
The COURT: Such land as this, as yours.
Q. Such land as yours.
A. It is worth four dollars an acre, about.
Q. Do you know of any land that could have been bought there at that time at four dollars?
A. Yes, sir, I do.
Q. More than one piece?
A. Yes; I know land there now can be bought for four dollars an acre.
Q. Same land could be bought then?
A. Yes.
Q. How did it compare with your land?
A. About the same thing.
Q. About the same thing. Do you know a man in that vicinity by the name of Shutter who bought lands from the company about the same time you did?
A. Yes.
Q. Do you know whether or not he was a homestead claimant?
A. No, he was not a homestead claimant.
Q. You didn't answer my question. Do you know?
A. Yes, I do know.
55 Q. Was he a homestead claimant?
A. No.
Q. How much land did he buy from the company?
A. I don't know.
Q. Well, do you know whether he bought any in Section—in 19?
A. No, he bought it in Section 17.
Q. In what section is Mr. Foster's land?

A. Section 17.
Q. How many acres did he buy?
A. 120, I think; I won't be sure; I think 120 acres.
Q. How much an acre?

Mr. HART: That is objected to as immaterial.
The COURT: Objection sustained.

Q. Do you know of lands being sold there at that time for any considerable sum more than you paid per acre?
A. No, I did not.
Q. Was there any—what was the reasonable value of your land when you bought it from the defendant company, what was it reasonably worth between man and man?
A. Four dollars an acre.
Q. Four dollars, and you paid how much for it?
A. Five.
Q. You paid five. Why did you pay more than it was worth?

Mr. HART: That is objected to as as immaterial.

Q. Why?

Mr. HART: Immaterial.
Mr. GORMAN: The point is that the man had his improvements there, and he had to pay what they asked.
The COURT: Objection overruled. No, I think that objection should be sustained.
Mr. GORMAN: That's all.

56 Cross-examination.

By Mr. HART:

Q. Wait a minute, Mr. Houston. When did you go on that land, 1900?
A. Yes, sir.
Q. And the first year you say you did some clearing?
A. Yes, and I built a house.
Q. Built a house.
A. Dug a well, built a barn.
Q. And the second year you did some more clearing?
A. Yes.
Q. So that in three or four—in four or five years you had cleared some?
A. Eighteen acres.
Q. Eighteen acres, and about how many acres of meadow land?
A. About forty acres.
Q. About forty acres of meadow land, and had put about eighteen hundred dollars' worth of improvements on it?
A. I think so.
Q. While that land in its natural condition you said was worth about four dollars an acre?
A. It was.
Q. That is at the time, without improvements?

A. Yes, without improvements. This is in the pine country, you remember.

Q. Yes, so that is the natural land worth four dollars an acre?

A. Mr. Walker ought to know how that land is; he has been through there. There is pine stumps.

The COURT: Simply answer the questions.

Q. How much an acre is it worth when it is cleared?

A. It is worth about thirty dollars an acre after it is cleared; take that much to clear it.

Q. Then in 1906 you had about twelve acres cleared?

A. Yes.

Q. And that twelve acres would be worth about thirty dollars an acre?

A. Be worth that.

57 Q. Eighteen acres, I mean. How much an acre would the meadow land be worth?

A. Be worth about twenty dollars. Not such hard clearing.

Q. And your improvements worth about eighteen hundred dollars?

A. I think so.

Q. That's all.

A. That is, this is improving, clearing and all that I——

Testimony closed.

"PLAINTIFF'S EXHIBIT A."

Certificate of Citizenship.

UNITED STATES OF AMERICA.
State of Minnesota, District Court,
County of Morrison:

Be it remembered, that on the 17th day of July in the year of our Lord one thousand nine hundred Joseph A. Houston appeared in the District Court, said Court being a Court of Record, having common law jurisdiction and a Clerk and Seal and applied to the said Court to be admitted to become a citizen of the United States of America, pursuant to the provisions of the several Acts of the Congress of the United States of America, for that purpose made and provided and the said applicant having thereupon produced to the Court such evidence and taken such oaths as are by the said acts required. Thereupon it was ordered by the said Court that the said applicant be admitted, and he was accordingly admitted by the said Court to be a citizen of the United States of America.

In testimony whereof, the Seal of the said Court is hereunto affixed this 17th day of July one thousand nine hundred in the 124th year of our Independence.

[Seal of District Court, Morrison County, Minn.]

S. P. BRICK, *Clerk.*

58 UNITED STATES OF AMERICA,
State of Minnesota, County of Morrison, ss:

I, S. P. Brick, Clerk of the District Court of the 7th Judicial District of the State of Minnesota, do hereby certify that the foregoing is a copy of a record now in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said District Court, this 17th day of July, 1900.

[SEAL.] S. P. BRICK, *Clerk.*
By —— ——, *Deputy.*

(Endorsed:) Certificate of citizenship.

"PLAINTIFF'S EXHIBIT B."

Northern Pacific Railway Company,
Land Department.

Thomas Cooper, Land Commissioner, St. Paul Minn.
G. H. Plummer, Western Land Agent, Tacoma, Wash.

NOTICE.—All prices quoted subject to change and lands subject to sale without further notice.

ST. PAUL, MINNESOTA, *June 14th*, 1906.

Mr. J. A. Houston, Cushing, Minnesota.

59 DEAR SIR: Replying to your letter of June 12th, I have to say that we are unwilling to sell you the land you occupy in section 19, township 131, range 31, without the mineral reservation. Thirty days will be allowed you within which to take definite action in regard to the purchase of this land, and if we do not hear from you within that time, we will conclude that you have decided not to buy and will offer the land to others. If you do not purchase, you should take immediate steps to remove your improvements from the premises.

Yours truly, THOMAS COOPER,
Land Commissioner.

H.

H.-W

"PLAINTIFF'S EXHIBIT C."

Northern Pacific Railway Company,
Office of Land Commissioner.

Thomas Cooper, Land Commissioner.

H.-B. ST. PAUL, MINN., *July 2*, 1906

Mr. J. A. Houston, Cushing, Minnesota.

DEAR SIR: Replying to your letter of June 30th, I have to say that we are not willing to sell you Lots 3, 5, 10 and 12 of section 19-131-31, leaving out lots 4 and 11. You must take all or none.

Yours truly, THOMAS COOPER,
Land Commissioner.

H.

60 (Title of Case.)

To P. B. Gorman, Esq., Attorney for Plaintiff.

Please take notice that the defendant proposes the foregoing as a case to be settled and allowed by the Honorable M. D. Taylor, the Judge who tried this cause.

Dated August 20, 1909.

C. W. BUNN,
C. A. HART,
Attorneys for Defendant, Saint Paul, Minn.

(Title of Case.)

It is hereby stipulated that the foregoing proposed case, consisting of thirty-one pages of typewritten matter may be taken as conformable to the truth and as containing all the evidence offered or introduced on the trial of this cause and all objections, rulings, orders and all other proceedings on such trial, including copies of exhibits introduced, and that the same may be settled and allowed as the settled case herein by the Honorable M. D. Taylor, the Judge who tried this cause, without notice.

Dated August 20, 1909.

P. B. GORMAN,
Attorney for Plaintiff.
C. W. BUNN,
C. A. HART,
Attorneys for Defendants.

(Title of Case.)

I hereby certify that the foregoing case, consisting of thirty-one pages of typewritten matter and exhibits, has been examined by me and found conformable to the truth and to contain all the evidence offered or introduced on the trial of this cause and all objec-
61 tions, rulings, orders and all other proceedings on such trial, and I hereby settle and allow the same as the settled case herein.

Dated St. Cloud, Minnesota, September 4, 1909.

M. D. TAYLOR, *Judge.*

(Title of Case.)

Notice of Appeal.

To the above named Plaintiff and P. B. Gorman, Esq., his attorney, and to Simon P. Brick, Clerk of said District Court:

You and each of you will please take notice that the above named defendant appeals to the Supreme Court of the State of Minnesota, from the judgment and the whole thereof entered herein on

the 14th day of August, 1909, in favor of plaintiff and against defendant.

Dated St. Paul, Minnesota, August 25, 1909.

C. W. BUNN,
C. A. HART,
Attorneys for Defendant.

Due and personal service of the foregoing notice and receipt of a copy thereof is hereby admitted this 26th day of August, 1909, and the bond required by Sections 4366 and 4368 of the Revised Laws of Minnesota, is hereby waived.

P. B. GORMAN,
Attorney for Plaintiff.

Due and personal service and receipt of a copy of the foregoing notice is hereby admitted this 16th day of September, 1909.

S. P. BRICK,
Clerk of said District Court.

62 STATE OF MINNESOTA,
County of Morrison, ss:

District Court, Seventh Judicial District.

I, S. P. Brick, Clerk of the above named Court, do hereby certify and return to the Supreme Court of the State of Minnesota that I have compared the paper writings to which this certificate is attached with the original Summons and Complaint; answer, except title; findings of fact and conclusions of law and memorandum of trial Court, except title; judgment, except title; settled case, except title; notice of appeal and waiver of bond, except title, in the action therein entitled, as the same appear of record and on file in said Clerk's Office at the Court House in said Morrison County, Minnesota, and find the same to be true and correct copies thereof, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court at the City of Little Falls, in said County on the 25th day of September, 1909.

[Seal of District Court.]

(Signed) S. P. BRICK,
Clerk of District Court, Morrison County, Minnesota.

63 16428.

State of Minnesota Supreme Court.

JOSEPH A. HOUSTON, Respondent,
vs.
NORTHERN PACIFIC RY. CO., Appellant.

Transcript of Judgment.

(Endorsed:) Filed Jan. 3d, A. D. 1910. I. A. Caswell, Clerk.

64 State of Minnesota Supreme Court, October Term, A. D. 1909.

No. 175.

JOSEPH A. HOUSTON, Respondent,
vs.
NO-THERN PACIFIC RAILWAY COMPANY, Appellant.

Pursuant to an order of Court duly made and entered in this cause, on the 3d day of January, A. D. 1910,

It is here and hereby determined and adjudged that the judgment of the Court below, herein appealed from, to wit, of the District Court of the Seventh Judicial District, sitting within and for the County of Morrison be and the same hereby is in all things affirmed. And it is further determined and adjudged that the Respondent above named, do have and recover of said No-thern Pacific Railway Company, Appellant, herein the sum and amount of Nin-ty-four and 75 100 Dollars ($94.75) costs and disbursements in this cause in this Court, and that said Respondent have execution for the enforcement thereof.

Dated and signed this 3d day of January A. D. 1910.

By the court.

Attest:

I. A. CASWELL, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25.00
Return	.....
Printer's Fees	57.75
Clerk's Fees, Supreme Court	12.00
Filing Mandate	.....
Affidavits and Acknowledgments	.....
Postage	.....
	$94.75

65 STATE OF MINNESOTA,
Supreme Court, ss:

I, I. A. Caswell, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy of said original, and that the same is a correct transcript therefrom.

Witness my hand and the Seal of said Supreme Court at the Capitol in the city of St. Paul, this 3d day of January, A. D. 1910.

[Supreme Court Seal.]

(Signed) I. A. CASWELL, *Clerk.*

66 State of Minnesota Supreme Court.

No. 16428.

JOSEPH A. HOUSTON, Respondent,
vs.
N. P. RY. COMPANY, Appellant.

Copy of Order of Judgment.

(Endorsed:) Filed Jan. 3d, A. D. 1910. I. A. Caswell, Clerk.

67 State of Minnesota Supreme Court, October Term, A. D. 1909.

No. 175.

JOSEPH A. HOUSTON, Respondent,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, Appellant.

Appeal from District Court, Seventh Judicial District, County of *Morrison.*

This cause having been duly argued and submitted at the General October Term of this Court A. D. 1909, upon the return to the appeal herein.

Now, after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the Court below, herein appealed from, be and the same hereby is, in all things affirmed, and that the Respondent above named have judgment accordingly.

Entered Jan. 3d, A. D. 1910.

By the court.

Attest:

I. A. CASWELL, *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original Order for judgment entered in the above entitled cause.
Attest:

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL, *Clerk*.

68 State of Minnesota Supreme Court.

16428.

JOSEPH A. HOUSTON, Respondent,
vs.
NORTHERN PACIFIC R. CO., Appellant.

Copy of Minutes of Argument.

(Endorsed:) Filed Jan. 3rd, 1910. I. A. Caswell, Clerk.

69 State of Minnesota Supreme Court, General October Term, A. D. 1909.

Thursday morning, 9:30 o'clock, November 11th, A. D. 1909. Court convened pursuant to adjournment. All the Justices being present.

Reg. No. 16428, Cal. No. 175.

JOSEPH A. HOUSTON, Respondent,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, Appellant.

This cause came on to be heard this day upon the return to the appeal herein.
Thereupon the same was argued by counsel, submitted to the court for decision and taken under advisement.
A true record.
Attest:

I. A. CASWELL, *Clerk*.

The foregoing is a full and true copy of the Minutes of Argument in the above entitled cause.
Attest:

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL, *Clerk*.
By —— ——, *Deputy*.

70 State of Minnesota Supreme Court, October Term, 1909.

16428.

JOSEPH A. HOUSTON, Respondent,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, Appellant.

Assignments of Error.

Charles W. Bunn, Charles A. Hart, Attorneys for Appellant.

(Endorsed:) Filed Nov. 4, 1909. C. A. Pidgeon, Clerk.

71 State of Minnesota Supreme Court, October Term, 1909.

JOSEPH A. HOUSTON, Respondent,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, Appellant.

Assignments of Error.

We assign as error:

I.

That the finding of the trial court that all the allegations of the complaint, save that charging fraud and deceit, are true, is not justified by the evidence.

II.

That the finding of the trial court that all the allegations of the answer other than those embraced in the finding as to the complaint, are not true, is not justified by the evidence.

III.

That the court erred in finding that plaintiff is entitled to judgment as demanded in his complaint and in directing the entry of judgment accordingly

CHARLES W. BUNN,
CHARLES A. HART,
Attorneys for Appellant.

72 State of Minnesota Supreme Court.

16428.

JOSEPH A. HOUSTON, Respondent,
v.
NORTHERN PACIFIC RAILWAY COMPANY, Appellant.

Opinion and Syllabus.

Filed Dec. 10, 1909. I. A. Caswell, Clerk.

October Term, A. D. 1909.

Lewis.

Brown, J., Concurs.

73 State of Minnesota Supreme Court, October Term, A. D. 1909.

16428. No. 175.

JOSEPH A. HOUSTON, Respondent,
v.
NORTHERN PACIFIC RY. CO., Appellant.

Syllabus.

The maxim, "Ignorantia juris non excusat," has no application when under a mutual mistake and misapprehension one party purchases from another property which the purchaser already owns.

Appellant claiming title under a land grant and respondent under his homestead entry, conducted a contest through the United States general land office and the case was finally decided in favor of appellant.

Held: Northern Pacific Ry. Co. v. Wass, 104 Minn., 411, followed, which was to the effect that the lands in question had not been segregated from the public domain at the time respondent made settlement and that he was the equitable owner of the land.

Respondent is entitled to equitable relief, to secure the cancellation of a contract for the purchase of his homestead from appellant, the parties acting under the misapprehension that the decision rendered in the contest before the government land office, was final and decisive of their rights.

Affirmed.

74 State of Minnesota Supreme Court, October Term, A D. 1909.

16428. No. 175.

JOSEPH A. HOUSTON, Respondent,
v.
NORTHERN PACIFIC RY. COMPANY, Appellant.

Opinion.

The real estate involved in this action was situated in Morrison county, within the indemnity limits of the grant made by the United States to the territory of Minnesota, March 3, 1857, for the purpose of aiding the construction of certain railroads, and also within the indemnity limits of the grant made to the state of Minnesota for the same purpose by act of Congress March 3, 1865, as amended March 3, 1871. The interest of the state was conferred upon the Western Railroad Company of Minnesota by act of the state legislature March 1, 1877. On December 31, 1877, the Western Railroad Company filed in the United States Land Office at St. Cloud, a list of lands, including those in question, which it selected as indemnity lands under the grant. In 1889 the St. Paul and Northern Pacific Railroad Company, successor in interest to the Western Railroad Company, filed in the same land office an amended selection list of indemnity lands, including the lands here involved. These selections had not been acted upon by the Secretary of the Interior when in 1900 respondent, being duly qualified, and
75 the lands in question being then vacant, made settlement thereon with the bona fide intention of entering the same under the homestead laws. Respondent has ever since maintained possession of and resided on the land, improving the same to the extent of $1,800. In 1902 respondent applied to the Register and Receiver of the United States Land District of St. Cloud for leave to make entry, but his application was rejected upon the ground that the lands were then embraced in a then pending, though unapproved, indemnity selection by the Northern Pacific Railway Company. He appealed to the Commissioner of the General Land Office, who affirmed the ruling of the local officers, and he appealed to the Secretary of the Interior, who, in 1904, affirmed the decision of the Commissioner. In 1905 the Secretary of the Interior approved the indemnity selection by the St. Paul and Northern Pacific Railroad Company, and thereupon the patent of the United States government was issued to the company, and the title conveyed by this patent was transferred to appellant as the successor in interest.

About a year after the ultimate rejection of respondent's application, and after the vesting of title in appellant, negotiations were opened between it and respondent. Appellant asserted its title, offered to sell those lands, together with two adjoining lots which formed a natural part of the tract, for $5. per acre. A contract was entered into and respondent undertook to pay $5. an acre for the

land, exclusive of minerals. This agreement was subsequently consummated and respondent paid the purchase price and received a deed to the premises, exclusive of minerals.

76 This action was brought for the purpose of rescinding and cancelling the deed and to recover the sum of money paid as purchase price for the premises, and for the purpose of securing the judgment of the court that the equitable title be declared to be in respondent, and that Railway Company be declared the trustee of the legal title and be required to convey the same to respondent. The complaint asserts that the Secretary's approval of the Railroad Company's selection was without authority and void; that he had no discretion but was legally bound to approve the homestead application of respondent, and that respondent's action in subsequently entering into an agreement of purchase was the result of a mistake of fact on his part and of fraudulent misrepresentations and intimidating threats made to him by appellant and its agents. The allegations of the complaint were put in issue by the answer, and it was alleged that the agreement of purchase was a compromise and settlement of a dispute between the parties over the lands in controversy. The trial court found that the allegations of the complaint were sustained by the evidence, "except that the agents and employés of the defendant who on behalf of the defendant conducted the negotiations set forth in the complaint, believed that the statements made by them were true, and none of such statements were made for the purpose of misleading, deceiving or defrauding the plaintiff."

77 Northern Pacific Ry. Co. v. Wass, 104 Minn., 411, is decisive of the first question argued. The lands had not been segregated from the public domain at the time the respondent made settlement for the reason that the lists of selection had not been approved by the Secretary of the Interior.

This leaves for consideration the question whether the evidence sustains the finding of the court that respondent purchased the land under a mistake of fact and as a result of duress.

During all the time the contest was in progress in the general land office and before the Secretary of the Interior, and until the issuing of the patent to the railroad company, respondent undoubtedly believed, and had every reason for doing so, that he was entitled to the land by virtue of his settlement and application as a homesteader, and that the final decision would be in his favor. Those who take advantage of such opportunities to acquire a home are not generally well posted as to rules of law governing titles to public lands, and there is nothing in the record to indicate that respondent possessed any knowledge upon the subject, save that which came to him through his experience in connection with his contest. He had settled on the land and made it his permanent home, improving the property to the extent of $1,800, and was still in possession when he was notified by the company that the land was for sale, in connection with two contiguous lots, minerals reserved, and that he must make up his mind within thirty days to either purchase or

78 remove his improvements, or the land would be sold to other parties. Under such circumstances it would have been quite natural for respondent to accept the statements of the railway company that they had absolute title; that there was nothing more he could do to assert his claim, and being confronted with the threat of having the land sold from under him, and being face to face with the probability of losing the benefits of all his improvements, he would naturally endeavor to protect himself as best he could. The two conditions which the company required of him as a purchaser were to buy two additional lots adjoining the homestead, and the reservation by the company of the mineral rights. The court found from this evidence that respondent was under pressure and did not freely and voluntarily enter into the contract. We are of opinion that the evidence sustains the finding.

The court also found that respondent entered into the contract under a mistake of facts; viz.: that he assumed from the representations made to him that the final step had been reached in the determination of his title and in assuming that the railway company had acquired absolute title in fee. There is no evidence to indicate that the agreement of purchase was a compromise. Respondent unquestionably believed that he possessed no title. He was ignorant of his own rights in the premises, and one of the important questions is: Does such mistake, or misapprehension, as to the nature of his title, afford him any ground for equitable relief? A mistake of law may be the result of ignorance, or error, with respect to some general rules of the municipal law applicable to all persons, which regu-

79 late human conduct, determine rights of property, of contract, and the like. Or, "the term may mean the ignorance or error of a particular person with respect to his own legal rights and interest which are affected by or which result from a certain transaction in *in* which he engages." Pomeroy's Equity Jurisprudence, (3rd Ed.) § 841. A mistake of law is not adequate ground for relief where a party, with knowledge of all the material facts and in the absence of equitable circumstances, for a valuable consideration, enters into a transaction affecting his interests, rights and liability, under ignorance or error with respect to the rules of law controlling the case. Perkins v. Trinka, 30 Minn., 241, is an illustration of the doctrine where the rights of the parties were doubtful. Each had equal means of ascertaining what those rights were and got together and settled the dispute. Such an agreement must be sustained when freely made, although a judicial decision was rendered afterwards showing that their rights were different from what the parties supposed them to be. So in Hall v. Wheeler, 37 Minn., 522, which arose from a dispute over the title of land. One party held a tax title and another the fee title. They settled their dispute and the court upheld the contract although a subsequent judicial decision showed their rights to have been different from what one of them supposed.

In the case under consideration the court found that the statements and representations made by the agents and representatives of appellant company regarding the title were believed by such

parties to be true, and that they were not made for the purpose of misleading, deceiving or defrauding respondent. There was
80 no evidence that the parties compromised and settled their claim as to the title to the land. It is clear that both the company and respondent assumed that the decision of the Secretary of the Interior was final, and that the title vested in the company.

As we view the question it is not necessary to determine whether the mistake made be called a mistake of law, or one of fact. The English courts class misunderstandings of this character as mistakes of fact. The striking feature of the case is that appellant succeeded in selling respondent land of which he already was the equitable owner, and which he did not have to purchase, and unless it appears clearly that respondent voluntarily entered into the contract, with full knowledge of all the material facts, he is not estopped by his conduct from repudiating the contract and insisting upon being restored to his own. Some of the authorities in dealing with this subject, place the right to repudiate a contract of this kind upon the ground that there was a failure of consideration, but to whatever source the technical right to rescind may be traced, the reason why courts of equity respond in such cases is that the demand for relief is based upon manifest justice. In an examination of the authorities we will confine ourselves to those cases where the mistake was with reference to title, or interest in property.

The earliest English case is that of Lansdowne v. Lansdowne, decided in 1729, 2 Jacob & Walker Rep. 205. Certain heirs divided real estate according to their supposed rights, as advised by a third party. Suit was afterwards brought by one of them to set aside the conveyance upon the ground of mistake, and the court set
81 the same aside upon the ground of mistake and misrepresentation of the law. Then comes the case of Bingham v. Bingham, 1 Vesey Sr. Rep. 126 (1748), where an agreement had been made for the sale of an estate and a bill was brought by the bidder to have the purchase money refunded upon the ground that he was already the owner of the estate. The defense was that it was the plaintiffs' own fault; that the title was produced to them and they had time to consider it, but the court held there was a plain mistake such as the court was warranted to relieve and not suffer the defendant to take money in consideration for the sale of an estate to which he had no right. In Cooper v. Phibbs, 2 L. R. Eng. & Ir. App. Cas. 149 (1867), the parties had made a mutual mistake with reference to title and it was held that they were entitled to relief. The opinion of Lord Westbury in this case has often been referred to as stating the proper rules applicable to cases of this character. The maxim, "Ignorantia juris haud excusat," had no application where the parties contract under a mutual mistake and misapprehension as to their relative and respective rights. See also Earl Beauchamp v. Winn, 6 L. R. Eng. & Ir. App. Cas. 223 (1873). In Jones v. Clifford, 3 L. R. Ch. Div. 779 (1876), the court passed upon a similar question, and reviews of Bingham v. Bingham and Cooper v. Phibbs, supra, approved of the doctrine, and held that the parties having dealt with each other upon a mistake of law as to the title,

they had a right to have the same rectified in a court of equity. Again, in 1894, in Huddersfield Banking Company, Limited, v. Lister & Son, Limited, 2 L. R. Ch. Div. 273, the court referred to and approved of the doctrine of the preceding cases, and held
82 that a mortgagee was entitled to have a release set aside which it had made under a misapprehension of the law.

In our own country there has been a wide diversity of opinion as to the exceptions to the general rule that there is no relief against a mistake of law, but the particular question involved in this case, where a party purchases from another property which he already owns, has not often been presented to the courts. In Blakeman v. Blakeman, 39 Conn. 320, the court applied the English rule in a case where the right of way through certain land had become extinguished by the purchase of the servient estate by the owner of the dominant estate, who afterwards sold the dominant estate and conveyed it by warranty deed which granted the land with its privileges and appurtenances, but did not in express terms grant the right of way. Both parties were ignorant of the legal principle under which the right of way had become extinguished and both supposed that it still existed. The court stated that there was no mistake as to the legal effect of the deed for it would have conveyed the appurtenant way if it existed; but held: "There was superadded to the mistake of fact, ignorance of a principle of law which, if known and contemplated, would have prevented the mistake under which the parties acted," and relief was granted. The New Jersey court held, in Swedenborg Loan & Bldg. Ass'n v. Gans, 65 N. J. E. 132 (55 Atl. R. 82), that where on the death of a mortgagor the mortgagee secured a release of the widow's right of dower, and also a deed to the premises from the mortgagor's father, under the belief that the property descended to the latter and cancelled the mortgage, the
83 complainant, as against the heirs of the mortgagor, was entitled to a decree for the re-establishment and foreclosure of the mortgage. After referring to authorities, both English and American, the court say: "The ability of courts of equity to rectify mistakes arising from ignorance of law is everywhere acknowledged to exist in certain instances. The propriety of exercising this power must depend upon the circumstances which surround each case. It will depend upon whether a party who asks relief has been negligent; whether he has been led into his belief by the other party; whether other innocent parties will be injured by a rectification of the mistake; or whether the mistake can be regarded as one of fact, although indirectly resulting from a mistaken notion of the law. All these and other features are to be considered in deciding whether it is equitable and politic to put the mistaken party in statu quo. * * * The mistake was in respect to the ownership of the property upon which the cancelled mortgage was an incumbrance, and the English cases treat such a mistake as one of fact." A review of *the* some of the authorities will be found in a note to Alabama and Vicksburg Ry. Co. v. Jones, 55 Am. State Rep. 494, and also the note to Marriot v. Hampton, 2 Smith's leading Cases, 421.

In Pomeroy's Equity Jurisprudence, p. 1484, §842 et seq., the author refers to some of the English cases above noted.

We are of opinion that in a case of this kind where a person enters into a contract for the purchase of property with the understanding that it belongs to another, when in fact it belongs to himself, he is entitled to relief, unless the circumstances are such that it
84 would be inequitable to restore the title. In this case respondent was an ignorant person, and while he may have consulted an attorney in a general way, the time given him to either purchase or remove from the land was so short that it cannot be said he fully considered and understood the effect of his act. We are aware of the case of Erkens v. Nicolin, 39 Minn., 461, wherein it was said: "Money paid under mistake of law cannot be recovered back where the transaction is unaffected by any fraud, trust, confidence, or the like, and both parties knew all the facts, and had equal means of knowing them." The facts were different and the case is distinguishable.

Affirmed.

LEWIS, *J.*

I concur in the result but prefer to place the decision upon the ground, which appears without serious controversy, that the parties entered into the transaction under a mutual mistake as to their legal rights. Both knew the facts but understood and believed that the decision of the United States land department was a final and conclusive determination of their respective claims to the land. In this way they were both mistaken; a mutual mistake of law, from which equity will relieve either.

BROWN, *J.*

85 STATE OF MINNESOTA,
Supreme Court, ss:

I, I. A. Caswell, Clerk of said Court, do certify that the foregoing is a true, full and complete transcript of the record and proceedings in the case of Joseph A. Houston, Respondent, vs. Northern Pacific Railway Company, Appellant, and also the opinion of the Court rendered therein, as the same now appears on file in my office.

In testimony whereof I have hereunto set my hand and affixed the Seal of said Court at my office in St. Paul, Minnesota, this 27th day of June, A. D. 1911.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk of Supreme Court of Minnesota.

86 State of Minnesota Supreme Court.

JOSEPH A. HOUSTON, Plaintiff and Respondent,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, Defendant and Appellant.

Assignments of Error.

Now comes the plaintiff in error, Northern Pacific Railway Company, and says that in the judgment of the Supreme Court of Minnesota herein there is manifest error as follows, to-wit: The court erred

1. In holding that the approval of the Railway Company's selection by the Secretary of the Interior was without authority and void, and that the Secretary had no discretion in the premises but was legally bound to approve the homestead application of the defendant in error.

2. In adjudging that the plaintiff in error holds its title under the patent of the United States as trustee for the defendant in error and in decreeing that the plaintiff in error convey accordingly.

Wherefore the Northern Pacific Railway Company, plaintiff in error, prays that the judgment of the Supreme Court of Minnesota be reversed.

NORTHERN PACIFIC RAILWAY COMPANY,
By EMERSON HADLEY, *Its Attorney.*

87 [Endorsed:] Original. 16428. State of Minnesota Supreme Court. —— County. Joseph A. Houston, Plaintiff & Respondent, vs. Northern Pacific Ry. Co., Defendant & Appellant. Assignments of Error. C. W. Bunn and Emerson Hadley, Attorneys for Defendant, & Appellant, St. Paul, Minnesota. Due service of this instrument and receipt of copy thereof admitted at —— this — day of ——, 191–. —— ——, Attorney for Plaintiff. Filed Jun- 23, 1911. I. A. Caswell, Clerk.

88 UNITED STATES OF AMERICA,
State of Minnesota:

To the Honorable Charles M. Start, Chief Justice of the Supreme Court of the State of Minnesota:

The Petition of the Northern Pacific Railway Company respectfully shows that on the third day of January, 1910, the Supreme Court of the State of Minnesota, rendered a final decree against your petitioner in a certain cause, wherein your petitioner Joseph A. Houston was plaintiff and respondent and Northern Pacific Railway Company was defendant and appellant, affirming the judgment of the District Court for Morrison County, Minnesota, as will appear by reference to the record and proceedings in said cause; and that said Supreme Court of Minnesota is the highest court of said state in which a decision in said suit can be had.

Your petitioner claims the right to remove said decree to the Supreme Court of the United States by writ of error under Section 709 of the Revised Statutes of the United States for the reason that there was drawn in question in said cause the validity of a statute or an authority exercised under the United States and the decision was against its validity, and that a manifest error hath intervened to the great damage of said Northern Pacific Railway Company, as appears by the record of the proceedings in said cause, which is herewith submitted.

Wherefore your petitioner prays the allowance of a writ of error returnable into the Supreme Court of the United States.

NORTHERN PACIFIC RAILWAY COMPANY, *Petitioner.*
EMERSON HADLEY,
Attorney for Petitioner.

Let the Writ of Error issue as prayed.

CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

Dated, June 22, 1911.

89 [Endorsed:] Original. 16728. State of Minnesota Supreme Court. —— County. Joseph A. Houston, Plaintiff & Respondent, vs. Northern Pacific Ry. Co. Defendant & Appellant. Petition for writ of Error. C. W. Bunn and Emerson Hadley, Attorneys for Defendant, & Appellant, St. Paul, Minnesota. Due service of this instrument and receipt of copy thereof admitted at —— this — day of ——, 191–. —— ——, Attorney for Plaintiff. Filed Jun- 23, 1911. I. A. Caswell, Clerk.

90 State of Minnesota, Supreme Court.

16428.

JOSEPH A. HOUSTON, Plaintiff and Respondent,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, Defendant and Appellant.

Bond.

C. W. Bunn and Emerson Hadley, Attorneys for Defendant, St. Paul, Minnesota.

(Endorsed:) Filed Jun- 23, 1911. I. A. Caswell, Clerk.

91 State of Minnesota, Supreme Court.

JOSEPH A. HOUSTON, Plaintiff and Respondent,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, Defendant and Appellant.

Know all men by these presents that we the Northern Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, as principal, and the National Surety Company a corporation organized and existing under the laws of the State of New York, as surety, are held and firmly bound unto Joseph A. Houston in the full and just sum of two hundred and fifty Dollars ($250) to be paid to said Joseph A. Houston, his heirs, executors or assigns, for which payment well and truly to be made we binds ourselves, our successors and assigns jointly and severally by these presents.

Sealed with our seals and dated this 22nd day of June, in the year of our Lord one thousand nine hundred and eleven.

Whereas lately in the Supreme Court of the State of Minnesota in a suit pending in said court between Joseph A. Houston, plaintiff, and Northern Pacific Railway Company, defendant, said suit being there entitled Joseph A. Houston, plaintiff and respondent, vs. Northern Pacific Railway Company, defendant and appellant, judgment was rendered against the said defendant Northern Pacific Railway Company and the said defendant having obtained a writ of error and filed a copy thereof in the office of the Clerk of the Supreme Court of Minnesota, to reverse the judgment in the aforesaid suit, and a citation directed to the said Joseph A. Houston citing
92 and admonishing them to be and appear at the Supreme Court *Court* of the United States at the city of Washington on or before the 22nd day of July, 1911.

Now the condition of the above obligation is such that if the said Northern Pacific Railway Company shall prosecute the said writ of error to effect and answer all damages and costs, if it shall fail to make its plea good, then this obligation to be void; otherwise to remain in full force and virtue.

NORTHERN PACIFIC RAILWAY COMPANY.
By EMERSON HADLEY, *Its Attorney.*

[Corporate Seal, National Surety Company.]

NATIONAL SURETY COMPANY.
By C. M. BEND, *Its Attorney in Fact.*

93 STATE OF MINNESOTA,
County of Ramsey, ss:

On this 22nd day of June, 1911, before me personally appeared C. M. Bend, Attorney in fact of the National Surety Company, the above named corporation, with whom I am personally acquainted, who, being by me duly sworn, said: That he is Attorney in fact of said corporation, the National Surety Company, that he knows the

corporate seal, that it was affixed by order of the board of directors of said corporation, and that he signed said instrument as Attorney in fact of said corporation by like authority and the said C. M. Bend acknowledged said instrument to be the free act and deed of said corporation.

[NOTARIAL SEAL.] DAN I. YORK,
Notary Public, Ramsey County, Minnesota.

My commission expires Aug. 25th, 1915.

Approved by
CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

94 & 95 THE UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Honorable Supreme Court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Supreme Court of the State of Minnesota before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in a suit between the Northern Pacific Railway Company, plaintiff and Joseph A. Houston, defendant, said suit being there entitled Joseph A. Houston, plaintiff and respondent vs. Northern Pacific Railway Company, defendant and appellant, wherein was drawn in question the validity of a statute or an authority exercised under the United States, and the decision was against its validity, a manifest error hath intervened to the great damage of said Northern Pacific Railway Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
96 of the said Supreme Court, this 22d day of June in the year of our Lord one thousand nine hundred and eleven.

[U. S. Circuit Court Seal, Dist. of Minnesota, Third Division.]

LOUISE B. TROTT,
Clerk of Circuit Court of United States for District of Minnesota.

The above writ is hereby allowed.
CHAS. M. START,
Chief Justice of Supreme Court of Minnesota.

97 [Endorsed:] Original. 16428. Supreme Court of the United States. Northern Pacific Ry. Co., Plaintiff in Error, vs. Joseph A. Houston, Defendant in Error. Writ of Error. C. W. Bunn and Emerson Hadley, Attorneys for Plaintiff in Error, St. Paul, Minnesota. Due service of this instrument and receipt of copy thereof admitted at —— this — day of ——, 191–. ——— ———, Attorney for plaintiff. Filed Jun- 23, 1911. I. A. Caswell, Clerk.

98 STATE OF MINNESOTA,
Supreme Court, ss:

I, I. A. Caswell, Clerk of said Court, do hereby certify that there was lodged with me as Clerk of said Court on June 23, 1911, in the matter of Northern Pacific Railway Company, Plaintiff in Error, vs. Joseph A. Houston, Defendant in Error,

1. The original bond of which a copy is herein set forth.
2. One copy of the Writ of Error, to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the Seal of said Court, at my office in the city of St. Paul, Minnesota, this 27th day of June, A. D. 1911.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk of the Supreme Court of Minnesota.

99 *Return on Service of Writ.*

UNITED STATES OF AMERICA,
District of Minn., ss:

I hereby certify and return that I served the annexed Citation on the therein-named Joseph A. Houston by handing to and leaving a true and correct copy thereof with P. B. Gorman, Att'y for said Joseph A. Houston, personally at St. Cloud in said District on the 24th day of June, A. D. 1911.

WM. H. GRIMSHAW,
U. S. Marshal,
By C. B. BUCKMAN, *Deputy.*

99½ THE UNITED STATES OF AMERICA, *ss:*

To Joseph A. Houston, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Minnesota, wherein the Northern Pacific Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ mentioned, should not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable Charles M. Start, Chief Justice of the

Supreme Court of the State of Minnesota, this 22nd day of June, in the year of our Lord one thousand nine hundred and eleven.

CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

100 [Endorsed:] Original. 16428. Supreme Court of the United States. Northern Pacific Ry. Co., Plaintiff in Error, vs. Joseph A. Houston, Defendant in Error. Citation. C. W. Bunn and Emerson Hadley, Attorneys for Plaintiff in Error, St. Paul, Minnesota. Due service of this instrument and receipt of copy thereof admitted at St. Cloud this 24 day of June, 1911. Attorney for Plaintiff, P. B. Gorman St. Cloud. Filed Jun- 27, 1911. I. A. Caswell, Clerk.

101 UNITED STATES OF AMERICA,
Supreme Court of Minnesota, ss:

In obedience to the commands of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the Seal of said Supreme Court of Minnesota, in the city of St. Paul, this 27th day of June, A. D. 1911.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk Supreme Court of Minnesota.

Endorsed on cover: File No. 22,805. Minnesota Supreme Court. Term No. 384. Northern Pacific Railway Company, plaintiff in error, vs. Joseph A. Houston. Filed July 18th, 1911. File No. 22,805.

Office Supreme Court, U. S.
FILED.
AUG 12 1913
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 57.

NORTHERN PACIFIC RAILWAY COMPANY,
Plaintiff in Error,

vs.

JOSEPH A. HOUSTON.

BRIEF FOR PLAINTIFF IN ERROR.

CHARLES W. BUNN.

Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 57.

NORTHERN PACIFIC RAILWAY COMPANY,
Plaintiff in Error,

vs.

JOSEPH A. HOUSTON.

BRIEF FOR PLAINTIFF IN ERROR.

Defendant in error Houston brought this action against the Railway Company in a State Court of Minnesota. He sought to cancel a deed of land in Morrison County theretofore made to him by the Railway Company, to recover what he had paid, and to have it decreed that he was the real owner when the Railway Company by falsely asserting its title got him to purchase. He based his claim of title on settlement and application at the government land office to enter the land as a homestead, which application was refused. The Railway Company claimed under a grant from the United States government to the State of Minnesota to aid in construction of a railroad, a patent issued thereunder to the State and conveyance

from the State to the Railway Company. The trial court gave judgment in favor of Houston. This judgment was affirmed by the Supreme Court of Minnesota, and the case is here on writ of error to review that judgment.

All the material facts are stated in the complaint (Transcript pp. 2-8) were found by the trial court and there is no controversy about them (Transcript p. 12). They are as follows:

Lots 3, 5, 10 and 12 of Section 19, Township 131 north, of Range 31 west, of the Fifth Principal Meridian, Morrison County, Minnesota, were surveyed public lands of the United States lying within the twenty miles indemnity limits of the grants made to the territory of Minnesota by the act of Congress approved March 3, 1857 (11 Stat. 195) for the purpose of aiding in the construction of railroads, also within the indemnity limits of the grant made to the State of Minnesota for the same purpose March 3, 1865 (13 Stat. 526) as amended March 3, 1871 (16 Stat. 588) (Transcript p. 2).

All the right, title and interest of the State of Minnesota in these grants were conferred by act of the Legislature of Minnesota March 1, 1877, on the Western Railroad Company of Minnesota, and subsequently by the Western Railroad Company were assigned and transferred to the St. Paul & Northern Pacific Railroad Company, and were again assigned and transferred by the St. Paul & Northern Pacific Railroad Company to the Northern Pacific Railway Company (Transcript p. 2).

On the 31st day of December, 1877, the Western Railroad Company, then the owner of said grants, filed in the United States Land Office at St. Cloud, Minnesota, that being the proper district, a list of

lands, including the tracts above described, which purported to be a list of selections under the indemnity provisions of its grants; but neither this list nor any paper accompanying it designated the particular lands lost and assigned as a basis for the selections (Transcript p. 3).

On December 4, 1889, the St. Paul & Northern Pacific Railroad Company, successor in interest of the Western Railroad Company, filed in the United States Land Office at St. Cloud an amended selection list naming the same lands, and on February 12, 1902, filed a re-arranged list, therein for the first time designating a loss for each tract selected. None of these lists was approved by the Secretary of the Interior until February 16, 1905 (Transcript p. 2 in connection with p. 4).

In April, 1900, while these selections were pending before the Secretary and unacted upon, Houston made settlement, and has since resided on the land. In August, 1902, he filed in the land office an application to enter under the homestead law, but his application was rejected because of the selections then filed and pending (Transcript pp. 3-4).

The Secretary of the Interior, Feby. 16, 1905, approved the selections, and thereupon patented the land to the State (Transcript p. 4). The title under this patent passed to the plaintiff in error (Transcript pp. 4-5).

About July, 1907, Houston made a contract with the Railway to buy the lands in question and some other land for the sum of $1074.00. At this time the agents of the Railway told him that the land was part of the Railway grant; that it was not subject to the homestead laws and had not been open to entry as a homestead since the Railway filed its selection; that

he could get title only by purchase from the Railway. Thereupon Houston made the contract and paid to the Railway $1074.40, the Railway delivering him its deed of the premises (Transcript pp. 5-7).

The foregoing being the facts determining the rights of the parties this controversy arose because of the erroneous decision of the Supreme Court of Minnesota in *Northern Pacific v. Wass*, 104 Minn. 411. In that case the holding was that filing of a railway selection did not prevent entry under the homestead law; and that such an entry would create a right, which could not be displaced by the Secretary's subsequent approval of the selection. Shortly after that decision this action was brought.

The Railway Company answered insisting on its title and also setting up that the purchase by Houston was made with full knowledge of the facts, and was a compromise and settlement of a controversy about the title depending on facts well and equally known to both parties (Transcript pp. 9-11).

The trial court held, following the *Wass* decision in 104 Minn., that the selection of the Railway Company, not having been approved by the Secretary when Houston settled on the land and made his application to enter, was ineffectual for any purpose and could not afterward be approved. The court went farther and held also that the contract between Houston and the Railway for sale of the land was made under mistake or misapprehension of the legal rights of the parties and should be cancelled. And judgment was entered for Houston as prayed (Transcript pp. 13-14).

The Railway Company appealed to the Supreme Court of Minnesota and that court affirmed the judgment; opinion pages 43 to 49 Transcript.

Since this decision of the State Supreme Court, the judgment of that court in the *Wass* case has been reversed. *Northern Pacific Railway Company v. Wass*, 219 U. S. 426 (Feby. 20, 1911).

ASSIGNMENTS OF ERROR
will be found at p. 86 Transcript.

This case is governed by *Northern Pacific Railway Company v. Wass*, 219 U. S. 426, which involved another tract of land under the same grants, selected by the Railway Company at the same time as the land here, settled upon and entered by Wass under the homestead laws while the same lists of indemnity selections were pending before the Secretary of the Interior and before they had been approved by him.

The facts in that case were identical with the facts in this and defendant in error cannot prevail except by attacking and reversing the judgment here rendered in the Wass case. That case was twice argued. It received more than ordinary consideration, there having been a difference of opinion after the first argument and a dissent from the judgment. It is hardly necessary or profitable to enter on a reargument of a case decided after so full consideration.

Mr. Charles W. Bunn for plaintiff in error.

There was no appearance or brief filed for defendant in error.

Memorandum opinion by MR. CHIEF JUSTICE WHITE, by direction of the court.

In *Northern Pacific Ry. Co.* v. *Wass*, 104 Minnesota, 411, it was decided that lands claimed under an indemnity grant, and described in lists of indemnity selections filed in the appropriate United States Land Office and which were rightfully pending for action by the proper officer were nevertheless subject to entry by others to the destruction of the right to select and to the frustration of the governmental power to approve the selections and award the land under the granting law. The judgment below which is now under review, was expressly rested by the court on the ruling in the *Wass Case*. *Houston* v. *Northern Pacific Ry.*, 109 Minnesota, 273. The identity between the controversies here presented and the one which was passed on in the *Wass Case* is additionally shown by the fact that it is stated in the printed argument on behalf of the railroad company, the plaintiff in error, there being no argument on behalf of the defendant in error, that the land involved in this case was covered by selections made at the same time the selections which were involved in the *Wass Case* were made, and were embraced in the identical lists which were the subject of contest in that case. But since this case was decided by the court below, its ruling in the *Wass Case* was reviewed by this court and it was reversed, thereby destroying the only foundation upon which the judgment in this case could possibly rest. *Northern Pacific Railway Company* v. *Wass*, 219 U. S. 426. It follows for the reasons stated in the *Wass Case*, and upon the authority of that case, the judgment below must be

reversed and the case be remanded to the court below for further proceedings not inconsistent with the opinion in the *Wass Case* and the action which we now take in applying the decision in that case.

Reversed.

NORTHERN PACIFIC RAILWAY COMPANY *v.* HOUSTON.

ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

No. 57. Submitted November 11, 1913.—Decided December 1 1913.

Decided on the authority of *Northern Pacific Railway Company* v. *Wass*, 219 U. S. 426.
109 Minnesota, 273, reversed.

THE facts are stated in the opinion.